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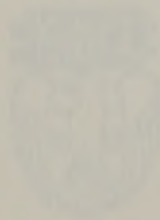
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The Indiana poor law

THE INDIANA POOR LAW

ITS DEVELOPMENT AND ADMINISTRATION
WITH SPECIAL REFERENCE TO THE PRO-
VISIONS OF THE ACT FOR THE YEAR 1905

ALICE SHAFFER
MASTERS OF ARTS

UNIVERSITY OF CHICAGO



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Social Service Monographs, Number Twenty-eight

THE INDIANA POOR LAW

ITS DEVELOPMENT AND ADMINISTRATION
WITH SPECIAL REFERENCE TO THE PRO-
VISION OF STATE CARE FOR THE SICK POOR

By

ALICE SHAFFER

MARY WYSOR KEEFER

and

SOPHONISBA P. BRECKINRIDGE



THE UNIVERSITY OF CHICAGO PRESS
CHICAGO · ILLINOIS

THE INDIANA POOR LAW

ITS DEVELOPMENT AND REFORMATION
WITH SPECIAL REFERENCE TO THE POOR
VIEW OF STATE CARE FOR THE POOR

ALICE SHAFER

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THE INDIANA POOR LAW

EDWARD J. HARRIS, DIRECTOR, INDIANA
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EDITORIAL NOTE

By SCHERRISEA T. BRACKENRIDGE

These two studies of the development of the legislation regarding the care and relief of the poor in Indiana confirm the series of poor law histories in the old Northwest Territory.¹ Indiana followed Ohio as the second state of the Northwest Territory, and Indiana was also the second state to attempt to provide for the care of the sick poor through the opportunities offered by the State University in providing professional education for medical students.

THE UNIVERSITY OF CHICAGO SOCIAL SERVICE MONOGRAPHS

Published in conjunction with the Social Service Review

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OF SOCIAL SERVICE ADMINISTRATION

The history of the development of the poor law in Ohio by adopting the pattern of the English poor law and the statute of Pennsylvania which had however been adopted in the Northwest Territory and in Ohio. There are the same questions of attempted distinction between the permanent and the temporary poor, the same confusion as to the responsibility of the township as well as against the county, the same turning from outdoor relief to institutional provision, the same reluctance to discover a state-wide administrative responsibility, although the entire service was, of course, controlled by the legislature, which is a state authority. There was, as has been said, a humane character to the administration of the law, so far as the was possible under the fixed pattern of the English act, with reference, for example, to the provision of legal services for destitute litigants.

¹See *The Poor Law and Its Administration*, by Ellen A. Smith, and *The Development of the Poor Law and the Work of the Poor Law Commission*, by David Brown and Keith F. Hall. Other poor law studies that have been published as "Social Service Monographs" include *The Development of Poor Relief Legislation in Kansas*, by Gust A. Brackening, and *The Course of Poor Law Administration in Rhode Island*, by Margaret Connel.

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Indiana is an extremely interesting state for various reasons. There were early liberal influences at work when, for example, Robert Owen came to Indiana with his new Harmony Colony, and, although he returned to England, he left his liberal sons to serve their adopted commonwealth. Moreover, the Society of Friends has been a humanizing if not a liberalizing influence in Indiana.

The method of dealing with the question of state responsibility for the relief of the destitute was answered in Indiana as in Ohio by adopting the pattern of the Elizabethan poor law and the statute of Pennsylvania which had likewise been adopted in the Northwest Territory and in Ohio. There are the same questions of attempted distinction between the permanent and the temporary poor, the same confusion as to the responsibility of the township as over against the county, the same turning from outdoor relief to institutional provision, the same reluctance to discover a state-wide administrative responsibility, although the entire service was, of course, controlled by the legislature, which is a state authority. There was, as has been said, a humane character to the administration of the law, so far as this was possible under the fixed pattern of the English act, with reference, for example, to the provision of legal services for destitute litigants.

¹ See *The Ohio Poor Law and Its Administration*, by Eileen Kennedy, and *The Development of the Poor Law and the Health Services of Michigan*, by Isobel Bruce and Edith Eichoff. Other poor law studies that have been published as "Social Service Monographs" include *The Development of Poor Relief Legislation in Kansas*, by Grace A. Browning; and *Three Centuries of Poor Law Administration in Rhode Island*, by Margaret Creech.

Indiana early recognized responsibility with reference to the care of the sick. Again, a humane point of view controlled the decisions of the courts. Family liability was restricted to parents and children. Brothers and sisters were not included among those on whom the obligation was imposed, and, when a central supervisory board was established in the late eighties, a very considerable amount of order was introduced into the administration and wasteful litigation was reduced both by the activities of this board and by a new appreciation of the possible use of the attorney-general's services.

The provision of medical care, especially in the form of hospitalization, assumes an interesting aspect here, as in Michigan, and Mrs. Keefer has brought together material showing the increasing recognition of the possible combination of service to the indigent and to the medical student. And the development of this provision of medical care for the poor has brought improved medical skill to the service of the entire community.

In this volume, as in the other volumes in this series, an attempt is made to provide for the student of public welfare development the materials through which the details of the problem and the multiplicity of the authorities involved can be appreciated. A list of the statutes reveals the amount of legislative attention called for. The judicial decisions and the opinions of the attorney-general illustrate the controversial character of many of the questions faced by administrative authorities. Attention might be called to the influence of Indiana geographically, and its early attempts to secure federal aid because of the commerce on the Ohio River and the resulting burden imposed upon Indiana communities because of the destitute and sick sailors or other persons brought there in connection with the increasing river commerce. The early appeals to Congress were, however, refused, and only when the recent depression made evident the national character of these questions was co-operation among the local jurisdictions, the state, and the federal government established. It may prove helpful to the student intent upon the revision of public welfare legislation to realize that statesman-like efforts in this direction were put forth one hundred years ago. The proposals for co-operation between the federal government and the state, and the state and the local jurisdiction, are by no means radical novelties!

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By ALICE SHAFFER

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PART I
THE INDIANA POOR LAW AND
ITS ADMINISTRATION

By ALICE SHAFFER

CHAPTER I

REASONS FOR STUDY OF POOR LAW HISTORY IN INDIANA

The past seven years have witnessed a very great increase in the expenditure of public funds for the relief of the unemployed, and for others who, because of some handicap, have been unable to care for themselves and their families.

This increased burden of public relief has supplied conclusive proof of the inadequacy of local governmental units for administrative purposes. The principle of local responsibility for the poor has been therefore shown to be impracticable in the present stage of community development. During this crisis, existing poor laws have been waived and temporary programs established which more satisfactorily meet the needs of individuals who are forced to ask for public aid.

The state and federal governments have had to assume a greater responsibility in meeting this national problem, and, in doing so, have developed state and federal supervision. This wider, new relationship in public service has drawn attention to the history and development of the existing poor laws of the various states, and a study of that development should guide future planning, and thereby use constructively the experiences and results of efforts put forth by those attempting at an earlier date to develop a better system of care for the poor.

It is the purpose of the following study to trace this development of the poor laws in Indiana from their territorial setting to the present time. The legislative provisions, together with the chain of influences which have changed or modified the poor laws, will be considered in chronological order. A discussion of the origin of the territorial poor laws is omitted, as it is available elsewhere.¹

¹ Aileen Kennedy, *The Ohio Poor Law and Its Administration* (Chicago: University of Chicago Press, 1934).

Indiana is a state in which there have been strong tendencies toward the centralization of public administration.² The way in which this has touched and affected the administration of the poor laws is shown in the later portions of this study. Political activity has always been regarded as an important duty of an Indiana citizen. Unfortunately, the pernicious doctrine, "to the victor belongs the spoils," became thoroughly interwoven in the political methods of the state and deplorable consequences of partisan domination resulted.³ The struggle against political patronage and its effects on social welfare has been an active one throughout the history of the state. Scandals which resulted from such activity brought out the need for a different method of selecting personnel, particularly in a field which had been so open to corrupt practices.

The earliest methods used in providing for the poor, during territorial days and the first few years of statehood, were the farming-out of paupers and the contract system and apprenticing children. Although the Constitution of 1816 made provision for "an asylum for those persons who by reason of age, infirmity, or other misfortunes may have a claim upon the aid and beneficence of society,"⁴ the first attempt to carry this out was made only in 1821 when Knox County was authorized to erect a poor asylum.⁵ This was the first provision made for institutional care or indoor relief in Indiana. Institutional care has been the prevailing system of aiding the poor as seen in the fact that every county, and there are ninety-two in all, has its poor asylum. Outdoor relief, or aid given elsewhere than in institutions, has been considered as a temporary measure, to be used only until the person relieved became again self-supporting or until provision could be made for indoor relief. There were, of course, interesting exceptions which were more in keeping with the modern conception of social service with treatment planned on an individual basis.

² Wm. A. Rawles, *Centralizing Tendencies in Administration of Indiana*, "Columbia University Studies in History, Economics, and Law," Vol. XVII, No. 1 (New York, 1903), chap. vii, pp. 327-36.

³ Alexander Johnson, "The State Aged 100," *Survey*, XXXVI (April, 1916), 119.

⁴ The Constitution of 1816, Art. 9, sec. 4.

⁵ "An Act to provide for the erection of a house for the employment of the poor of Knox County," *Laws of Indiana* (1820-21), chap. xlv, p. 102.

An important development resulted when in 1886-87 an inquiry was made by the Society of Friends concerning the poor of the state and the types of care provided for them. This investigation led the investigators to recommend the creation of a state board of charities and corrections, which would supervise the whole system of public charities in the state. They petitioned the legislature and proposed a bill which was adopted in 1889, thus creating the Board of State Charities.⁶ The educational work of this board has been outstanding, and through its efforts there were brought about important changes in poor law legislation and administration in the state. The poor law of 1899⁷ reflects a new social attitude toward the recipient of relief, and this act in particular has been generally considered an advanced step in social legislation.

The chief sources of information used for the following study have been the Acts of the Northwest Territory, the Indiana constitution and statutes, the journals of the House and Senate, the annual reports of the Board of State Charities, the decisions of the Supreme Court of the state, and the published opinions of the attorney-general. Other sources include early histories of Indiana, reports of the National Conference of Charities and Corrections, the Indiana *Bulletins of Charities and Corrections*, the Minutes of the Indiana Yearly Meeting; and such reviews as Wm. A. Rawles, *Centralizing Tendencies in Indiana*; Alexander Johnson, *The Almshouse*; Amos Butler, *A Century of Progress*, together with studies of the poor law in other states and other similar published material, to which careful citation is made.

⁶ "An Act to establish a Board of State Charities, prescribing their duties, appropriating \$4,000 and declaring an emergency," February 28, 1889, *Laws of Indiana* (1889), chap. xxxvi, p. 51.

⁷ "An Act to regulate the administration of the relief of poor persons and prescribing certain duties of the overseers of the poor and other officers in relation thereto," February 24, 1899, *Laws of Indiana* (1899), chap. xc, p. 121.

"An Act to amend section thirty-one (31) of an act entitled, 'An Act for the relief of the poor' approved June 9, 1852, in force May 6, 1853," February 24, 1899, *Laws of Indiana* (1899), chap. lxxxvii, p. 118.

"An Act to provide a Board of County Charities and Corrections and define the powers and duties of said Boards," February 17, 1899, *Laws of Indiana* (1899), chap. xxxiv, p. 30.

CHAPTER II

THE HISTORIC BACKGROUND OF INDIANA

The pioneer families who entered the Northwest Territory settled in small and widely scattered agricultural communities. They brought with them ideals of government, religion, and education, such as they had known in the communities from which they migrated.

A brief review of this period shows that the earliest travelers in Indiana were the Jesuit missionaries, French fur-traders, and soldiers.¹ Each of these groups, from an entirely different motive, sought to gain the friendship of the Indians then living in this region. Coming down from Canada, the priests and fur-traders followed the course of the Ohio River and smaller tributaries in Indiana and Illinois, establishing missions and trading posts along their route. French settlers soon followed and were the chief inhabitants until about the middle of the eighteenth century.² From the time of their earliest settlements until the end of the Old French War in 1763, French jurisdiction extended over the territory of which present Indiana was then a part. During this time there was little that might be called local civil government. The Customs of Paris, then the common law of France, served as a code of laws for the early settlers. There was a mixture of military and civil authority exercised by the commandants and priests.³ So far as is known there were no courts of justice,⁴ neither was there yet any system of relief for the poor such as the Jesuit priests had been responsible for establishing in other countries.⁵

The history of Indiana is inseparably woven into the larger politics

¹ J. Law, *Colonial History of Vincennes* (Vincennes, 1858), chap. i, pp. 2-15.

² H. A. Lindley, *Civics of Indiana* (Boston, 1909), p. 8.

³ S. Breese, *Early History of Illinois* (Chicago, 1884), p. 222.

⁴ W. A. Rawles, *Centralizing Tendencies in the Administration of Indiana* (New York, 1903), chap. i, p. 16.

⁵ *Lettres edifiantes et curieuses* (Paris, 1749), pp. 71-94.

of the Northwest Territory. Vincennes, one of the first settlements, was included in the province of Louisiana and was early made a judicial district for administrative purposes,⁶ being governed from New Orleans, through Fort Chartres, Illinois.⁷

The settlers were said to have been indifferent to political rights, careless, easy going, contented; honest in their business transactions and simple in their manner of living.⁸ The life of the missionaries, soldiers, and traders did not permit those groups to establish permanent homes, and even when efforts were made to till the soil, it was done in a crude way.

As power passed from the French to the English, following the treaty of Paris in 1763, the French inhabitants crossed the Mississippi into Spanish territory,⁹ while colonists from the Atlantic coast began to settle in Fort Wayne, Vincennes, and Quiatanos. The transfer of this area from a nation having Gallic customs and polity to one having English laws, traditions, and institutions is particularly significant in the history of poor relief and its administration.

Although a civil government had been introduced in 1774, the preceding military régime continued. A highly centralized government had been provided for by the law which was passed by the Virginia legislature in 1778. Citizens were free to choose their civil officers, who were to enforce laws to which the settlers had been accustomed.¹⁰

When Major John Hamtrack came to represent the United States, he became the sole legislative, executive, and judicial authority. It is said that "he had the good sense to assume all the power that he considered best for the public welfare and to assert it with firmness."¹¹

A good foundation for social, industrial, and institutional life was provided by the Ordinance of 1787.¹² Civil and religious liberty were

⁶ W. H. Smith, *The St. Clair Papers II* (Cincinnati, 1882), pp. 137, 148, 176, 348.

⁷ J. P. Dunn, *Indiana* (Cambridge, 1888), chap. i, p. 58. ⁸ J. Law, *op. cit.*, p. 17.

⁹ E. Logan, *History of Indiana* (Indianapolis, 1915), p. 22.

¹⁰ C. I. Walker, *The Northwest during the Revolution*, in "Michigan Pioneer Collections" (Detroit, 1871), III, 9.

¹¹ J. P. Dunn, *op. cit.*, p. 262.

¹² J. F. Patterson, *The Constitution of Ohio and Allied Documents* (Cleveland, 1912), p. 43.

recognized as a necessary basis for the establishment of a permanent government. The anticipation of future growth in the Northwest Territory is shown in the provision which made for its later development. The executive power was to be vested in the governor, the judicial power in a general court composed of three judges, and the legislative power in the governor and judges acting as a legislative council. The second stage of government provided for was reached in 1799.

In this vast area of the Northwest Territory settlements were too remote from the seat of government to be impressed with its powers.¹³ This was the chief reason for further division of the territory which occurred May 8, 1800, when Indiana Territory became a separate division. Its government was to be similar in every respect to that guaranteed and demanded by the Ordinance of 1787. When this territory was formed there was no break in the administration of the laws, and advantage was taken of the Northwest Code, which had then been partially adjusted to the needs of a pioneer country.

Through this early history Indiana is seen as a part of a sparsely settled region which had been subject to the government of France, England, Virginia, and the United States. Many of the French settlers, who cared little for civil government, had gone on to other sections, while more colonists from the East began to enter the new territory.

The government, at first far removed from the settlers, was constantly drawn closer to them. The first law-making body in the territory began to adopt and shape poor law legislation which had been inherited from England and later passed on to the states as they broke away from the earlier domination of the Eastern authorities.

¹³ C. J. Monks, *Courts and Lawyers of Indiana* (Indianapolis, 1916), Vol. I, chap. i, p. 27.

CHAPTER III

THE DEVELOPMENT OF POOR RELIEF UNDER THE TERRITORIAL GOVERNMENT

The first mention of poor relief in the laws of the Northwest Territory is found in the acts of 1790.¹ Under this enactment justices of the General Quarter Sessions of Peace were to divide the counties into townships, in each of which there was to be an overseer of the poor, appointed annually by the justice of peace to serve one year. The overseers were given no administrative power and were subordinate to the justices who were to carry out the provisions for the poor. Relief-giving was then a function of the courts.

It was the duty of an overseer to notify the justice "of all vagrant persons likely to become chargeable, and to take notice of all poor and distressed families and persons residing in his proper township, and enquire into the means by which they were supported and maintained." Whenever an overseer found persons "really suffering through poverty, sickness, accident or any misfortune or disability" which caused them to be "a wretched and proper object of public charity," the justices were to be informed immediately and would then arrange for "proper and seasonable relief."

Five years later, when the laws of the territory were revised,² the governor and judges adopted a statute which Pennsylvania had enacted as a poor law in 1771.³ Although the overseers were given administrative power, they were still limited somewhat by provisions

¹ S. P. Chase (ed.), *Statutes of Ohio and the Northwestern Territory* (Cincinnati, 1833), Vol. I, chap. xvi, sec. 1, p. 107.

"An Act to authorize and require the courts of general quarter sessions of the peace to divide the counties into townships and to alter boundaries of the same when necessary, and also to appoint constables, overseers of the poor, and clerks of the townships, and for other purposes therein mentioned," published November 6, 1790, in *ibid.*, pp. 107-9.

² *Ibid.*, chap. lvi, p. 177.

"A Law for the Relief of the poor," published June 19, 1795, to take effect October 1, 1795.

³ Laws of the Commonwealth of Pennsylvania (1771-85), II, 1-19.

which made it necessary for them to secure an order from two justices before relief could be given or the poor person's name "admitted to the poor-book." The outgoing overseer was to nominate persons who were to be appointed by the justices as overseers.

Under this act of 1795 assessments,⁴ not exceeding two cents on the dollar, could be made by the overseers with the approval of the justices and repeated as often as necessary for the support of the poor. Work for relief was the plan provided for poor persons "capable of working." They were to be set to work in houses provided with "a convenient stock of hemp, flax thread and other ware and stuff." An early attempt to classify poor persons needing public aid was made in this statute. Other classes of poor, "old, blind, impotent and lame persons or other persons not able to work," were to be kept in homes. The overseers could contract with persons for house or lodging, for keeping, maintaining, or employing the poor. If relief in these forms were refused, the applicants for aid were not entitled to any assistance. Children and young persons, that is, males under twenty-one and females under eighteen, whose parents were dead or unable to keep them, were to be apprenticed.

Yearly accounts and reports of the overseers were to be gone over by three capable and discreet freeholders, who were to be elected by the people of each township. These reports were to include the names of all the poor in the respective townships, a statement as to when the persons became chargeable, a list of all certificates delivered to the overseers, by whom and when delivered.⁵

On moving into the Northwest Territory or from one township to another, persons had to bring a certificate, signed by the justice in the county from which they came.⁶ This was obviously for the purpose of determining settlement or an individual's eligibility for relief from the public funds of a particular community. Such a provision would hardly seem necessary if it were recalled that the settlements in the territory were far apart and traveling was greatly limited. In the more closely settled regions of the eastern states, settlement regulations were more important, inasmuch as each township maintained only its own poor. Such a certificate obligated the state or township of origin to be responsible for the support of a poor person should relief become necessary.

⁴ Chase, *op. cit.*, chap. lvi, sec. 4, p. 179.

⁵ *Ibid.*, sec. 10.

⁶ *Ibid.*, sec. 18.

It was legal "to remove, convey and settle such person" in the county from which the certificate was brought, and overseers were responsible for receiving and caring for legally returned persons. They were liable to a fine of twelve dollars if this were neglected.

Settlement could be gained by holding public office in the township for one year, by paying taxes for two successive years, by paying a yearly rental of twenty-five dollars for a tenement or property in the township and living in it for one year, also by living on one's own property in a township for one year. Lawfully bound or hired servants, unmarried and without children, could gain a settlement after serving their master in the township for one year. This was also true of apprenticed children.⁷ A married woman acquired settlement through her husband. In case the husband had no settlement, the wife retained her last settlement before marriage.⁸

A fine of three dollars was to be paid by any one concealing or entertaining poor persons who had no settlement.⁹ If a poor person died while being concealed, the cost of the burial would not be assumed by the township, and if those entertaining the pauper refused to pay the overseer, he was authorized to assess them for the cost of burial, which was to be paid in weekly amounts. Further penalties were collectible by assessing the goods and chattels of such an offender. In case there was no assessable property, the offending person was to be placed in jail until the amount was paid or he was discharged by due course of the law.

Whenever a poor person became ill and died before a settlement was obtained, the overseers were to notify the county where the last settlement had been gained, "of the name, circumstances and condition of such persons." If this notice were not taken care of, two justices could direct the constable to sell the goods.¹⁰

It is evident that the purpose of this law was to protect local units from the burden of supporting the poor of any other township. Beside the principle of local responsibility for relief, the principle of family liability was also recognized. Parents, grandparents and children and grandchildren, who were sufficiently able, were held legally responsible for each other's support and maintenance.¹¹

⁷ *Ibid.*, sec. 16.

⁸ *Ibid.*, sec. 17.

⁹ *Ibid.*, sec. 24.

¹⁰ *Ibid.*, sec. 27.

¹¹ *Ibid.*, sec. 28.

An act, supplementary to the poor relief law of 1795, was passed in 1799,¹² which ignored provisions for workhouses and established a system of farming out the poor. The establishment of workhouses in the townships probably proved to be impracticable. Under the statute the overseers were to have a public sale every year in May, when the poor would be farmed out to the lowest bidder, who was to keep them "at moderate labor." Notices of the sale, containing the names and ages of all persons to be farmed out, were to be published in at least three of the most public places in each township, ten days before the sale. Fifteen days after the sale, the overseers were to report to the county commissioners the sum for which the poor were sold. The commissioners were to levy taxes equal to this amount, and after collecting it, to place it in the county treasury.¹³ This step toward local centralization shifted the cost of poor relief from the separate townships to the county as a whole, and this arrangement continued in Indiana until 1897, or for almost a century.¹⁴

The "farmers" of the poor were paid every six months "in satisfaction for their trouble and for all expenses in keeping and supporting the poor for the term of one year." Anyone becoming a public charge after the annual farming-out had been completed, was to be disposed of in the same manner. If it were found that the poor had received ill treatment, or were not provided with the common necessities of life, the overseers could withhold part of the compensation supposedly due for their care.

When Indiana Territory was organized in 1800,¹⁵ the plan for the relief of the poor included the systems of apprenticing children and farming out all others who needed aid. Although the cost of relief

¹² *Ibid.*, chap. xx, sec. 1, p. 284.

"An Act supplementary to the act entitled 'A law for the relief of the poor,' " approved December 19, 1799, *ibid.*, pp. 284-85.

¹³ *Ibid.*, sec. 2.

¹⁴ "An Act to amend section thirty-five (35) of an act entitled, 'An act for the relief of the poor,' approved June 9, 1852," March 8, 1897, *Laws of Indiana* (1897), chap. cli, p. 230. (Township trustees were to levy taxes with which the county treasury would be reimbursed for money expended during the preceding year on township poor relief. If the trustees failed to levy this tax the county commissioners were authorized to do so.) See below, p. 49.

¹⁵ C. J. Monks, *op. cit.*, p. 21.

was to be borne by the county, the township was the unit of administration.

Indiana Territory was at the time of its separation from Ohio divided into three counties extending over most of the territory now included in the state of Indiana, all of Illinois and Wisconsin, the western half of Michigan, and a part of Minnesota. As has been said before, there was at this time no interruption in the administration of the laws.

The governor and judges in one of their earliest legislative sessions¹⁶ continued to formulate further conditions for eligibility for relief by the county. It was made the responsibility of a master or owner of servants to care for them, if they became sick or lame, until their period of service expired. If servants were "put away" by their masters "under pretense of freedom," and later became chargeable to the county, the master was to forfeit thirty dollars to the overseer of the poor.

The fees of various officers were designated, and justices were to be allowed fifty cents for removing a pauper, while twenty-five cents was to be given for relieving one. No other provision for the compensation of poor relief officers was made.¹⁷

By an act of 1807, the courts of common pleas were given authority to nominate and appoint overseers, to receive the reports made by them after the poor had been farmed out, and to levy and have collected the assessments made for the relief of the poor.¹⁸ The use of the courts of common pleas, instead of county commissioners, for the functions suggested above, and the substitution of the county unit for that of the township were the chief changes made. This law incorporated the provisions included in the acts of 1790 and 1795.

The next development was registered in an act of 1813.¹⁹ Accord-

¹⁶ "A Law Concerning Servants," September 22, 1805, *Laws of Indiana Territory*, chap. ii, p. 26. (Servants were not to be chargeable to the counties before their term of servitude expired.) See chap. ii, sec. 8, p. 28, *Laws of Indiana Territory*, 1801-1806 (Paoli, 1806), chap. ii, sec. 8, p. 28 (1803).

¹⁷ *Ibid.*, sec. 12.

¹⁸ "A law for the relief of the poor," *ibid.* (1807), chap. xxiii, sec. 2, p. 119.

¹⁹ "An Act providing a means to help and speed poor persons in their suits," February 24, 1813, *ibid.*, chap. iv, sec. 1, p. 10.

Today, such services are rendered in connection with the office of "public defender,"

ing to this act, poor persons were to be given free counsel. The principle that "impartial justice shall be administered to all citizens as well to the poor as to the rich," caused provision to be made to have counsel assigned by the court, and to permit poor persons to have certain writs free of cost. They had to take an oath before a justice of the peace to the effect that they were "not worth" ten dollars, before they could apply to the judge for such free service.

The ideal which is expressed in the act is one which recognizes certain human rights, regardless of "race, creed, or purse," and was very early introduced in Indiana's provision for the poor.

Three years later, when Indiana's constitution was adopted and Indiana became a state, it was made clear that all laws then in force in the territory, not inconsistent with the constitution, should continue and remain in full force and effect until they expired or were repealed.²⁰

Thus the poor law of the Northwest became the early poor law of Indiana. The voice of the people themselves, which had been heard from the earliest period in the New England town government, was soon to be heard in Indiana, and its influence can better be judged as the poor laws in the new state are examined.

who represents indigent accused persons in order that they might have equality before the law. This movement, which began in California in 1913, when the first public defender's office was established by Los Angeles County charter, has been recognized as being necessary for the administration of justice. It is based on two important principles: (1) That it is as much the function of the state to shield the innocent as to convict the guilty, and (2) that the "presumption of innocence" requires the state to defend as well as to prosecute accused persons. See Mayer C. Goldman, *The Public Defender* (New York, 1917), chap. i, p. 3.

The first voluntary public defender in Indiana was Attorney Frank C. Gore of Evansville, appointed in November, 1914, by the judge of the Circuit Court. He was to serve until the office could be tested.

The general argument against having the court assign counsel was due to the fact that too often the attorneys who defended the poor were the younger, inexperienced, and uncompensated lawyers. Whether or not such services could be requested without compensation was a question which came to the Supreme Court of Indiana in several instances. See below, pp. 204, 207, 245, 267.

²⁰ Constitution of 1816, Art. XII, sec. 4.

CHAPTER IV

LEGAL PROVISION FOR THE CARE OF THE POOR, 1816-44

When Indiana entered statehood in 1816, the framers of its constitution made it the duty of the General Assembly, as soon as circumstances permitted, "to form a penal code, founded on the principles of reformation and not of vindictive justice; and also to provide one or more farms, to be an asylum for those persons who by reason of age, infirmity, or other misfortunes may have a claim upon the beneficence of society; on such principles that such persons may therein find employment and every reasonable comfort and lose, by their usefulness, the degrading sense of dependence."¹

The powers of government were divided into three distinct departments, the executive power being vested in the governor,² the legislative authority in the General Assembly,³ and the judicial power in a supreme court, circuit courts, and other inferior courts as the General Assembly might establish.⁴

County business was to be transacted by boards of county commissioners, who were to be chosen by the electors of the counties.⁵

Following the close of the war with Great Britain in 1814, there was a rush of immigrants to the Northwest Territory and the new states that had already been carved out of that territory. Between 1810 and 1820 Indiana's population increased from 24,520 to 147,178 persons.⁶ In 1810, 393 of the total population were free colored persons and 237 were slaves, while in 1820 there were 1,230 free colored persons and 190 slaves. Although slavery was prohibited by the Ordinance of 1787 and by the Constitution of 1816, it was not entirely abolished until several years after Indiana had been admitted to the

¹ Constitution of 1816, Art. IX, sec. 4.

² *Ibid.*, Art. III, sec. 1.

³ *Ibid.*, Art. IV, sec. 1.

⁴ *Ibid.*, Art. V, sec. 1.

⁵ "An Act to establish a Board of County Commissioners," December 17, 1816, *Laws of Indiana* (1816), chap. xv, p. 115.

⁶ *Twelfth Census of U.S.: Population*, p. 2.

Union. The figures given above do not include the Indians who still lived in this region, as they were considered of tribal character and were not included in the census figures prior to 1860.

In this new stream of immigration there were a number of Quakers who had left the southern states because of the pro-slavery agitation there. "In the long drawn-out struggle in Indiana for justice, even to the unjust, the part taken by the Society of Friends deserves mention."⁷ During this period the Quakers opposed slavery and suffered for their opinions just as they have, throughout their history, been willing to face any opposition, if the holding and expression of their principle meant progress toward social justice and the enrichment of individual lives.

Aside from influences of particular groups, within the state, activities in neighboring states were watched and frequently followed. It was a period of rapid growth and development. Not everyone who came was able to be self-supporting, and the problems of poverty became more acute.

The territorial laws regulating the care of the poor were re-enacted in 1818⁸ with few changes or additions. The first provision for paid administrators of poor relief was made by authorizing the county commissioners to appoint some "suitable person" to settle with the overseers of the poor as often as they may think it necessary and to make a "reasonable compensation" for their services.

Overseers, receiving reports that a person was "lying sick or in distress without friends or money so that he was likely to suffer," were to investigate the case and grant temporary relief provided the person could not be removed to his place of settlement.⁹ In case of death the "proper township" was to allow reasonable funeral expenses which were to be paid by the county treasury. All other laws which had previously been in force were repealed.

The suppression of vagrancy was one of the additional duties placed on the justices.¹⁰ Sheriffs and constables were to inform the

⁷ Alexander Johnson, "The State Aged 100," *Survey*, XXXVI (April, 1916), 97.

⁸ "An Act for the relief of the poor," approved January 24, 1818, *Laws of Indiana* (1817-18), chap. xiv, p. 154.

⁹ *Ibid.*, sec. 25, p. 162.

¹⁰ "An Act concerning vagrants," January 24, 1816, *Laws of Indiana* (1817-18), chap. lxii, p. 329.

justices of the presence of vagrants in their districts and the justice was to place in jail all adults coming under this classification, and to bind out minors. A vagrant was described as "a person [who shall be] suspected of getting his livelihood by gaming, and every able-bodied person, [who is] found loitering and wandering about and not having wherewithal to maintain himself by some visible property and [who doth] not betake himself to labor in some honest calling to procure a livelihood, and all persons who quit their habitation and leave their wives and children without suitable means of subsistence whereby they suffer or may become chargeable to the County and all other idle, vagrant and dissolute persons rambling about without any visible means of subsistence."

In 1820, settlement laws were made more flexible.¹¹ Overseers, on being unable to ascertain and establish the last place of settlement of an applicant for aid, could still lawfully farm him out. If a poor person were not able to claim settlement where he resided and the overseers were unable to establish it elsewhere, he was to be deemed and taken as legally settled in the town of his residence.

The first attempt to carry out the constitutional provision for the care of the poor in asylums was made in 1821.¹² While the authorization for the building of an asylum was of local character and applied only to Knox County, it contained the provisions which were later adopted in a general law, permitting each county to establish a poor asylum.¹³

A house for the employment and support of the poor was to be under the direction of a continuous board of three reputable citizens who were to be so elected by the electors of Knox County¹⁴ that the term of one director would expire each year. In case of the refusal or neglect of a director to take the necessary oath he was to be fined thirty dollars, which was to be paid into the poor fund. The directors were to be a body politic and corporate with power to take and

¹¹ "An Act amendatory to an Act entitled 'An Act for the relief of the poor' approved January 26, 1818," January 11, 1820, *ibid.* (1819-1820), chap. xx, p. 31.

¹² "An Act to provide for the erection of a house for the employment of the poor of Knox County," January 9, 1821, *ibid.* (1820-21), chap. xlv, p. 102. For amendments to this act see below, list of statutes, p. 359.

¹³ See below, p. 34.

¹⁴ Act of 1821, sec. 2, p. 103.

hold real property not exceeding a value of five thousand dollars and to receive bequests to be used for the poor.¹⁵ They were to erect a building for the accommodation of the poor in the various townships and to provide all things necessary for their care, including their employment. . . . Stewards, matrons, physicians or surgeons, and all other necessary attendants for the care of the poor and the apprenticing of children were to be employed by the directors and to serve at their pleasure. These directors were to have all the powers formerly given to the overseers of the poor.

After the costs of land and buildings were estimated by the directors, the county commissioners were to increase the county tax by one-fourth part of the sum necessary for these purposes.¹⁶ Directors were to render an annual account to the county commissioners and report to the Circuit Court and to the Grand Jury the number, ages, and sex of the persons kept in the asylum, as well as a report of the children apprenticed, giving the name of their master or mistress and "the trade, occupation or calling," and the Circuit Court was to appoint visitors to inspect the asylum.¹⁷

The poor of the county were to be removed to the asylum as soon as it was completed. Institutional care or indoor relief was to replace the other forms of relief which were given. Overseers not complying with these regulations were to forfeit the costs of all future maintenance, except in cases when by sickness or other sufficient cause any poor person could not be removed to the asylum. In such cases the overseers were to present the situation to the nearest justice of the peace who, being satisfied of the truth, was to certify this to the directors and at the same time issue an order to the overseer authorizing him to maintain those persons until they could be removed. The directors were to make a reasonable allowance for temporary relief and for the costs of removal.¹⁸

Poor persons entitled to relief were to be sent to any constable in the county on an order or warrant of two justices of the peace. The directors had to decide when poor persons could be maintained elsewhere.¹⁹ If a pauper were married to a person who was not supported

¹⁵ *Ibid.*, sec. 4, p. 104.

¹⁶ *Ibid.*, sec. 5, p. 105.

¹⁷ *Ibid.*, sec. 6, p. 106.

¹⁸ *Ibid.*, sec. 8, p. 107.

¹⁹ *Ibid.*, sec. 9, p. 108.

by the county the director could maintain them together if that expense did not exceed the cost of care that could be given in the poor asylum.²⁰

In this connection it is significant to note that at such an early period preference was given to a type of relief which would permit the maintenance of normal family relationships, provided the cost in the home would be as reasonable as asylum care.

While the type of relief afforded was to be determined more on the basis of the economic expenditure involved than on the consideration of social values, the latter was definitely recognized. This provision also indicates that the plan for relief had some flexibility, of which advantage could be taken at the discretion of the directors.

Rules and regulations for the direction, government, and support of the poor in the poorhouse or otherwise were to be made by the directors, but were first to be submitted to the judges of the Circuit Court for their approval.²¹ Every month one director was to visit the poorhouse and hear complaints. The directors were to receive ten dollars a year for their services. As soon as all the poor had been removed to the poorhouse the office of overseer was to be abolished.²²

A supplementary act in 1822 gave a poor person, if he was refused relief by the overseers and believed himself entitled to its benefits, the right to apply to the board of commissioners. If the commissioners thought that relief should be given, they could direct the overseers to put the applicant "on their poor list."²³

This same act specified that idiots who had come to the state previous to the adoption of the constitution, and who still lived there, could be considered legal residents of the county where they then resided.²⁴

A new and rather advanced step which more closely approaches individual treatment of at least one group of persons was adopted in 1824.²⁵ The boards of county commissioners were not limited to the

²⁰ *Ibid.*, sec. 11, p. 109.

²¹ *Ibid.*, sec. 13, p. 109.

²² *Ibid.*, sec. 15, p. 110.

²³ "An Act supplemental to an Act entitled, 'An Act for the relief of the poor,' approved January 24, 1818," December 21, 1821, *Laws of Indiana* (1821-22), chap. xviii, p. 27.

²⁴ *Ibid.*, sec. 2, p. 27.

²⁵ "An Act for the relief of the poor," January 30, 1824, *Revised Laws of Indiana* (1824), chap. lxxii, sec. 1, p. 278.

farming-out system for adults. They could in their discretion allow and pay to poor persons who might become chargeable as paupers and who were of mature years and sound mind, and who from their general character would probably be benefited thereby, such annual allowance as would be equal to the charge of their maintenance by employing the lowest bidder to keep them. The board was to take the usual cost in similar cases as the rule for making such allowances.

While relief was not given on the basis of individual need, the law recognized that some individuals might benefit more from such a plan than they would under the farming-out system. It must be remembered that so far poor asylum care had been permissive only in Knox County.

The appointive power given to the courts in 1807 was now vested in the county commissioners, who were to appoint overseers and other local officers.

A much simpler settlement law made it possible for any person to have a settlement after he had resided in a county for one year.²⁶ These acts were by no means the source of universal satisfaction. In Governor Ray's message to the general assembly in 1825, he spoke of the poor law as one "radically defective in the principles of humanity. . . ." ²⁷ He compared the farming-out system to that of selling merchandise or cattle in a public market. This form of relief, he said, "changes the unfortunate dependent from an object of public charity into a means of private speculation." He recommended that the state be divided into districts of counties or larger units and provision be made for an asylum in each area which would care for the poor, deaf, dumb, and unfortunate of the district.

This message was probably responsible for an act passed in 1825 providing for ascertaining the expense of supporting the poor annually in this state.²⁸ A survey was to be made by the clerks of the Circuit Court, who were to report the amount of relief being spent in

²⁶ *Ibid.*, sec. 11, p. 279. By this act the commissioners of Clark County were granted permission to build a poorhouse in accordance with the plans designated for Knox County (sec. 27, p. 283).

²⁷ *Senate Journal 1825-26* (Indianapolis, 1826), pp. 26-28.

²⁸ "An Act providing for ascertaining the expense of supporting the poor annually in the state," January 13, 1826, *Laws of Indiana* (1825-26), chap. xli, p. 49.

each county, together with the number and kind of paupers and indigent persons receiving aid.

Another act of local character was passed in 1825, authorizing the qualified voters in the townships of Switzerland, Franklin, and Ripley counties to elect their constable, fence viewers, and overseers of the poor.²⁹ One justice from each township, in the counties named, was to be a member of the county board, called the Board of Justices, which was to meet once every four months to transact county business in place of the County Commissioners.³⁰

In 1826 this provision and the selection of overseers by township electors was applied to the entire state.³¹

Evidently there was no need for a county poorhouse in Knox County, or they were not satisfied with that system of relieving the poor, for in 1828 its sale was authorized³² and poor relief was again to be administered in accordance with the act of 1824, as amended since that date. It is, in fact, doubtful whether or not the commissioners ever erected a house of employment there.

Regardless of this experience in Knox County, the next year the legislature passed an act³³ for the erection of poorhouses in Dearborn and Washington counties. In 1831,³⁴ Floyd County was granted permission to have its commissioners contract with some individual for "the keeping and taking care of" all the paupers. Such a person was to be given all the powers which had been granted to the overseers. While individuals had been farmed out and perhaps groups of paupers "bought" by the same "farmer," the contracting

²⁹ "An Act to authorize the several townships in certain counties herein named to elect township officers and for other purposes," January 13, 1826, *ibid.*, chap. lxxvii, p. 49.

³⁰ *Ibid.*, chap. xli, sec. 3, p. 49.

³¹ "An Act regulating the manner of doing county business in certain counties therein named and also to elect township officers," January 26, 1827, *ibid.* (1826-27), chap. xiii, p. 15.

³² "An Act relative to the Knox County poorhouse," January 5, 1828, *ibid.* (1827-28), chap. xlvii, p. 69.

³³ "An Act authorizing asylums for the poor in the counties of Washington and Dearborn," January 29, 1830, *ibid.* (1829-30), chap. iii, p. 7.

³⁴ "An Act to authorize the Board of Commissioners of Floyd County to contract for the keeping and taking care of paupers of said county and for other purposes," January 24, 1832, *ibid.* (1831-32), chap. xviii, p. 20.

with one person to care for the poor had not been practiced before in Indiana.

With much of the public lands still unsettled, and in view of the grants made by Congress for certain benevolent purposes, such as the Connecticut and Kentucky schools for the deaf, it seemed possible to the legislators that Congress might donate at least small portions of land to be used for the assistance of the poor, either by erecting poor asylums on the land or by using for that purpose the proceeds of the sale of such land as might be donated.³⁵ They therefore addressed a memorial on the subject, which is so interesting that it is quoted at length.³⁶

They also requested two sections to be applied to the benefit of the deaf and dumb in the state and one section to erect and sustain a "lunatic asylum." Kentucky had already been granted assistance for the Kentucky Deaf and Dumb Asylum, and this no doubt influenced the legislators who continued to make requests for federal aid both to general classes in need of assistance and to individuals.³⁷

The revised laws of 1831 made general application of the right to establish poor asylums³⁸ and, as stated before, these were to be patterned after the provisions which were originally made in respect to Knox County.

By the adoption of a plan similar to that of Floyd County, in which contracts were let out for the care of the poor by an individual, Knox County was no longer to have overseers of the poor. Their duties were transferred to the justice of the peace, who was to investigate all applicants for poor relief.³⁹ The superintendent was to

³⁵ See also, "A Joint Resolution of the General Assembly concerning the Public Lands," February 3, 1832, *ibid.*, chap. cxlvi, p. 281. "A Joint Resolution of the General Assembly, soliciting of Congress a donation of lands to actual settlers in indigent circumstances," January 16, 1832, *ibid.*, chap. ccii, p. 283.

³⁶ See below, p. 195.

³⁷ "An Act to provide for the location of two townships of land reserved for a seminary of learning in the Territory of Florida, and to complete the location of the grant to the deaf and dumb asylum of Kentucky," approved January 29, 1827, 4 *U.S. Statutes at Large* 201 (Nineteenth Congress; 2d ed.), chap. viii.

³⁸ "An Act for the relief of the poor," February 10, 1831, *Revised Laws of Indiana* (1831), chap. lxix, p. 382.

³⁹ "An Act respecting the Knox County poorhouse," January 24, 1832, *Laws of Indiana* (1832-33), chap. xxi, p. 22.

be responsible to the commissioners, and to make a report twice a year, giving the time and manner of admission of each pauper, and also to report about his health, his fitness to labor, and the results of his industry.⁴⁰

Following the incorporation of St. Joseph's Orphan Asylum in 1833,⁴¹ the children in at least one county were to be given care other than that afforded in a poor asylum or by apprenticeship. This institution was privately established and endowed by one Theodore Badin of that county. The trustees and "governesses" of the institution were vested with the powers and obligations of "conscientious, humane and charitable guardians," and the overseers of the poor were to be discharged of their responsibility for orphans accepted by the home. The trustees were to receive orphans of any age or sex, as they saw fit, and to provide them with food, clothing, and education. The children were to be taught to work, raised to virtuous habits, and trained to industrious pursuits, that they might become useful members of society.⁴² The governor was given the privilege of appointing one or more visitors to examine the institution, its system of instruction, the employment, discipline, and internal regulation, and to report this to the next legislature.

This is the earliest provision in Indiana which suggests state supervision of children. A private agency assumed the responsibility of maintaining, training, and educating orphan children, and in St. Joseph County dependent children, accepted by the asylum trustees, were no longer to be under the care of the overseers of the poor.

Apparently, county asylum care had proven to be neither a practical nor an economical way of caring for the poor, and the erection of an asylum at the joint expense of several counties was advocated. Franklin, Fayette, and Union counties were to consider the expediency of such a plan, but they were not to be compelled to enter into any agreement.⁴³ No evidence of this authority's being taken advantage of has, however, been available.

⁴⁰ *Ibid.*, sec. 2.

⁴¹ "An Act to establish the St. Joseph Orphan Asylum," February 2, 1833, *ibid.*, chap. lxi, p. 75. This was, of course, a private sectarian institution.

⁴² *Ibid.*, sec. 10, p. 77.

⁴³ "An Act to authorize an asylum for the poor of the counties of Franklin, Fayette and Union," January 23, 1834, *ibid.* (1833-34), chap. v, p. 9.

A new service for children in the poorhouses was recognized in the provision offering educational opportunities for those children who could not be bound out.⁴⁴ Indiana's constitution intended that a general education was to be equally open to all, and in accordance with this ideal opportunities for such training were to be made available in the asylums. If the children were not educated there, it was the duty of the superintendent to see that provision was made for schooling elsewhere. If the director could find a "suitable" pauper to serve as a teacher, this was recommended.

Overseers could no longer lawfully farm out the poor at public outcry. At their discretion they could require sealed proposals and "sell" them in this way.⁴⁵

Typical of some of the individual case situations that came up for attention in the legislature is one concerning Wm. Bisland, for whom a memorial⁴⁶ was sent to Congress, asking that his name be added to the pension list. In the beginning of the Indian hostilities in 1832, when the "savages" were ruthlessly destroying property and sacrificing the lives of citizens in Hickory Creek, an unauthorized company was raised in Fountain County. William Bisland, a member of that company, "a poor, but honest and highly respectable man, with a large but helpless family of children, principally females" had his right foot shot so that an amputation became necessary. He had since that time been disabled and living on "the charity of relatives" who were unable to continue their assistance. The law governing ordinary pensions did not reach his case because he was not in the regular militia, and the legislature therefore asked that his name be included on the pension list.

The following year another memorial was sent to Congress, this time for the benefit of the boatmen on the Ohio River. Because of the large number of persons who were "thrown destitute upon her banks," and the fact that their care and relief had "become excessively burthensome to those inhabitants of her borders," the legis-

⁴⁴ "An Act to amend the act entitled, 'An act for the relief of the poor,' February 10, 1831," February 1, 1834, *ibid.*, chap. vi, p. 11.

⁴⁵ *Ibid.*, sec. 3, p. 12.

⁴⁶ "A Memorial and joint resolution of the Legislature of the State of Indiana praying relief for Wm. Bisland," January 15, 1834, *ibid.*, chap. cclxxiv, p. 372.

lature asked that money be appropriated by Congress for the establishment of a national hospital on the Ohio River in Indiana. It was pointed out that some places were unable to meet the needs of the boatmen, caused by sickness and accident; commerce on the Ohio River was increasing, which would naturally make the problem of relief to the sick and disabled an even greater one; and also that not Indiana alone but three million people were interested.

When the passage of such a bill was advocated in the twenty-third Congress, Mr. Denny⁴⁷ spoke in favor of the erection of a hospital on western waters where danger from steamboat traveling and cholera was so great. He pointed out that captains had been compelled to set apart a portion of the boat for the sick, for it was impossible for them to get suitable accommodations on shore. While it was felt by some that such a hospital should be erected at the mouth of the Ohio River, this was opposed by others who were already interested in a state hospital at Smithland, for which they expected to ask for an appropriation. Every seaman was then required to pay two dollars and forty cents a year into the federal treasury as a fund to support sick and disabled seamen. The bill was later referred to the Senate Committee of Commerce and Mr. Hendricks,⁴⁸ who spoke of it then, hoped that this committee would not practice such delay as it had in years past. He suggested that the want of money was not at that time a consideration.

Mr. Davis⁴⁹ of the Commerce Committee, to whom the Senate bill had been referred, reported on a substitute bill which suspended for one year the tax of twenty cents each on American seamen for a hospital fund and instead appropriated \$150,000 for one year in lieu thereof, to be paid from the treasury. This bill was accompanied by resolutions which called for the secretary of treasury to be instructed to ascertain the cost for the erection of three hospitals for the relief of

⁴⁷ Harmon Denny (1794-1852), was a representative from Pennsylvania (1829-37) *Register of the Debates in Congress, 1835* (Twenty-third Congress, 2d sess.), Vol. II, part 2, p. 1475.

⁴⁸ William Hendricks (1782-1850) was a representative from Indiana (1825-37). *Ibid.*, 1836 (Twenty-fourth Congress, 1st sess.), Vol. XII, part 1, col. 56.

⁴⁹ John Wesley Davis (1799-1859) was a representative from Indiana (1835-37, 1839-41, 1843-47). *Ibid.*, 1836-37 (Twenty-fourth Congress, 2d sess.), Vol. XIII, part 1, col. 690.

sick and disabled seamen. He was also to draw up a project of a law to regulate the disbursement of funds for the relief of the seamen and the government of such hospitals. This bill was only a change of policy for one year, and after that the government could decide and retain the matter in its own hands. Some members raised strenuous objections to the government extending patronage, and expressed the fear that every branch of industry might then be asking the government to pay the expenses of sickness resulting from it. To open up such a system would tend to corrupt morals and endanger institutions. After further amendments, the bill was returned to the Committee and no further discussion of it appears in the congressional debates.

Boats from New York, Pennsylvania, Ohio, and Virginia came through this section and thousands of sick were left to perish in cabins or continued to float without the common comforts and conveniences which the poorest at home might enjoy. This appeal for federal aid suggested that the problem to be remedied was one of wider interest than that of a single state, and could not be met properly by the resources in the section where it most frequently occurred.

In 1835, the first definite salary scale for the overseers was adopted by an amendment⁵⁰ of the poor law of 1831, authorizing the payment of one dollar a day, "for every day they were necessarily employed in the discharge of their duties." This was to be allowed by the county commissioners from the county treasury.

Another appeal to Congress, for the relief of a family, was made in a memorial for Margaret Nation "and others."⁵¹ Margaret Nation was an "aged and infirm woman . . . encumbered with a large number of deaf and dumb children, whom she was unable to support and who were unable on account of the aforesaid to support themselves." The Indiana senators and representatives in Congress were instructed and requested to "use their best exertions" in having

⁵⁰ "An Act to amend an act entitled, 'an Act for the relief of the poor,' approved February 10, 1831," February 8, 1836, *Laws of General Nature* (1835-36), chap. xxvii, p. 61.

⁵¹ "A Memorial to Congress for the relief of Margaret Nation," February 8, 1836, *Laws of a Local Nature* (1835-36), chap. cciv, p. 396.

Congress pass a law, donating one quarter-section of land to Margaret Nation and to each of her six children in some section of Indiana where the lands were yet vacant. Indications of the problems in relation to handicapped persons made their first appearance during this period and continued to arouse interest until, as will be seen later, special provision was made for first one group and then another.

During the territorial period and under the first constitution of Indiana, the General Assembly passed a relatively large number of private laws, such as those granting divorces to specified persons and also a number of local acts which were supposed to be published separately from the session laws of a general nature.⁵² This was not strictly followed, however, as definitely local laws were sometimes included in the general publication, and general laws appeared among local acts.

In the local acts of 1837, a resolution, adopted by the General Assembly, presents a problem which arose in connection with the farming-out system.⁵³ John Burch of Daviess County had "bought" a pauper of that county the previous May, which was the annual time set for the public sale, and was to keep him for a year. Because of the pauper's serious illness, which occurred after he had come to the Burch home, he was confined to his bed. The price which the "farmer" had bid "was a much less price than he could keep him for without a great sacrifice of time and money. . . ." In view of this, the commissioners in Daviess County, to whom Burch had sent a petition, were authorized to allow him additional remuneration out of the county treasury.

In 1839, a situation developed which called for further legislation, effecting the establishment of a single asylum for the use of two or more counties. The asylum had been built in Fayette County. In accordance with the duty of an overseer to bind out pauper children who were brought to the asylum, an unequal burden developed upon the citizens of Fayette County, and especially on the overseer. In

⁵² John G. Rauch and Nellie C. Armstrong, *Indiana Historical Collections XVI; a Bibliography of the Laws of Indiana* (Indianapolis, 1928), Preface, p. viii.

⁵³ "A Resolution concerning the relief of John Burch," *Laws of a Local Nature* (1837-38), chap. xvii, p. 448.

reality, he was responsible for apprenticing the children of not one but of three counties, since some were brought from Franklin and Union counties to the asylum. Such an uneven division of responsibility was remedied by causing the directors of the asylum to bind out any children who were under its care.⁵⁴

That same year the assessors were to make an enumeration of the deaf mutes in the state and classify them on the basis of age into groups "under ten," "between the ages of ten and twenty," and "those over twenty years of age."⁵⁵ Following this enumeration the General Assembly asked Congress for two townships, to be used for the construction and support of an asylum for the education of deaf mutes and blind persons.⁵⁶ In 1839 an allowance system was authorized for blind persons so that "they might reside with their families, if they had any, and so avoid separation by being sent to the county poorhouse."⁵⁷ These blind pensions or annual allowances were to be administered by the county commissioners. If the commissioners found a resident who had become blind and was unable to be self-supporting they were to pay from the county fund "such sum as they deemed necessary for the support of the blind person. . . ." In order to discourage blind persons in other states from coming to Indiana, for the purpose of receiving this new type of support, the commissioners were to administer it only to those persons "who had become blind or lost sight by sickness suffered within this state. . . ." Prior to 1840, three groups of persons, the aged, the deaf, and the blind, had been classified as in need of special care. The next class considered was the insane, who were said to be running at large, and were dangerous to the community. Virginia had established a state institution as early as 1763, Kentucky in 1822, and in the eastern

⁵⁴ "An Act to amend an act entitled, 'an Act to authorize an asylum for the poor of the County of Franklin, Fayette, and Union,' approved February 10, 1831," February 17, 1838, *Local Laws* (1838-40), chap. cxlvi, p. 270.

⁵⁵ "An Act to provide for ascertaining the number of deaf mutes in the state," February 13, 1839, *Laws of a General Nature* (1838-39), chap. xli, p. 58.

⁵⁶ "A Memorial to Congress praying for two townships for the construction and support of an asylum for the education of deaf mutes and blind persons," February 17, 1839, *Local Laws* (1839-40), chap. ccxlviii, p. 253.

⁵⁷ "An Act to provide for the support of the indigent blind of this State," February 7, 1830, *Laws of a General Nature* (1839-40), chap. li, p. 71.

states, Dorthea Dix had already been investigating the conditions under which the insane were kept; and this movement, which was stimulated by her insight and interest, aroused the citizens of Indiana as it had stirred persons in other states.

When she visited Indiana in 1846, she found the insane in some poorhouses, both men and women, chained to the floors. She reported that the hospital then about to be opened would not have facilities to provide for one in ten of the patients needing care. She estimated the total number of insane, idiots, and epileptics in the state to be more than nine hundred.⁵⁸ For only a few years before Dorthea Dix's visit to Indiana had any attention been given in regard to the insane. Justices (finding an insane person running at large "and thus being dangerous to the community") were to issue venire to a constable, who would have an investigation made by twelve householders.⁵⁹ If necessary, the justice was to appoint some suitable person to take charge of the insane person until further order could be made at the next Circuit Court.

A joint resolution, adopted in 1841, urged the governor to write other states to learn the most approved plans for the care of the insane. The last census had given the number of the state's insane persons as two hundred and twenty-four. With the general population increasing rapidly, and the difficulty arising from using the institutions of other states, the General Assembly thought it criminal to delay longer in making provision for them.

The problem of supporting all the institutions which were being recommended called for increased taxation, so that in 1842 an additional tax of two mills on each hundred dollars' worth of property was levied, beside the general tax of five cents on the dollar.⁶⁰ This

⁵⁸ Memorial of D. L. Dix, Praying a grant of Land for the Relief and Support of the Indigent Curable and Incurable Insane in the United States, June 23, 1848 (U.S. Thirtieth Cong., 1st sess., "Senate Miscellaneous Document: No. 150"). See S. P. Breckinridge, "Memorial of Dorthea L. Dix," *Public Welfare Administration in the United States* (Chicago, 1927), Part I, Sec. III, doc. 4, pp. 195-231.

⁵⁹ "An Act to amend 'an Act concerning insane persons,' approved February 22, 1818," February 12, 1840, *Laws of a General Nature* (1839-40), chap. lii, p. 72.

⁶⁰ "An Act to provide means to support a deaf and dumb asylum in the State of Indiana," February 13, 1843, *Laws of Indiana* (1842-43), chap. lxxx, p. 75.

was for the support of a deaf and dumb asylum in the state, the establishment of which was authorized in the next legislative session.⁶¹

The first forty-four years of Indiana's existence as a state marked a period of rapid growth, which called for many rapid adjustments. The poor laws and their development during this time bear evidence of quickly made plans which sometimes were not practical and often had to be radically changed. On the other hand, many of the provisions show a genuine interest in the poor persons as individuals, and recognize that they could not all be given the same treatment if it were to be rehabilitative rather than palliative. Institutional care for persons with mental or physical handicaps was just beginning to receive consideration, and its development in Indiana was stimulated by neighboring states in which state care for the defective classes had already begun.

There were, then, in Indiana, at that time, five methods of caring for the poor, namely: the farming-out system, where the poor were sold to the lowest bidder; the apprentice system of binding out minors; poor asylum care, in which all classes of the poor might be housed together in one institution; the contract system or hiring of an individual to care for all the poor; and outdoor relief or assistance given in the poor person's home.

The joint system of county-township responsibility, which was started in 1799 when Indiana was a part of the Northwest Territory, had been continued. Overseers who administered relief in any one of the various ways provided by law secured poor funds from the county treasury, and all townships were taxed alike for this fund regardless of the amount used in carrying out their relief program. With such a system, regardless of one's settlement in any particular township within the county, relief came from one treasury. The treasurer paid the bills without any check on the actual facts concerning its use. It is doubtful whether the commissioners gave careful attention to this matter. Only in later years, when state supervision of poor relief was established, did the public become aware of the waste and misuse of public funds.

⁶¹ "An Act to establish an Asylum for the education of deaf and dumb persons in the state of Indiana," January 15, 1844, *General Laws* (1843-44), chap. xvi, p. 36.

The singling out of individual classes in need of specialized care had just been started, and their removal from the authority of the poor law is seen during the next period in which institutional growth made a rapid development.

Two points might be made in connection with this development. The first is that there was in Indiana no provision for the "warning out" that constituted a conspicuous feature of the Ohio administration. Reference has been made⁶² to the territorial act of 1818, which contains the following provision: "on complaint made by overseers to the justice of the county, the justice may by warrant or order directed to the overseer of the poor, remove persons likely to become chargeable, to place of last legal settlement, unless such person or persons shall give sufficient security to discharge and indemnify the said county or place, to which he, she or they are likely to become chargeable as aforesaid."⁶³ This provided for the removal of persons likely to become chargeable unless they provided security, and is similar to the territorial legislation⁶⁴ and Ohio's first legislation, but it does not make use of the "warning out" as it was practiced in Ohio. This provision was omitted from the revised statutes of 1852.

The application of the principle of family responsibility was much less immediate and direct than in the English or the Ohio Acts. The responsibility of relatives is first introduced in 1901, making it the duty of the overseer, whenever a claim for relief is presented, to "inquire as to the family relationships of poor persons for whose benefit claims for relief are made, and as far as possible, shall ascertain whether such persons have relatives able and willing to assist them."⁶⁵

This provision was revised in 1926 to read "If poor persons applying for township aid have relatives able to assist them who are living

⁶² Above, p. 16, n. 8.

⁶³ "An Act for the relief of the poor," approved January 24, 1818, *Laws of Indiana* (1817-18), chap. xiv, sec. 14, p. 157.

⁶⁴ Salmon P. Chase, *The Statutes of Ohio and the Northwest Territory*, Vol. I, chap. liv, sec. 18, p. 179.

⁶⁵ "An Act for the relief of the poor repealing all laws in conflict," March 9, 1901, *Laws of Indiana* (1901), chap. cxlvii, sec. 7, p. 325.

in the township, it shall be the duty of the overseer before giving aid a second time, to call on such relatives of poor persons and ask them to help their poor relatives, either with material relief or by furnishing them with employment. . . ."⁶⁶

The provision is not specific regarding relatives to be seen, such as parents, brothers, sisters, grandparents. It does not carry the same mandatory provision that was found in the territorial law.⁶⁷

⁶⁶ *Burns Annotated Indiana Statutes* (1926), chap. xci, "Poor Persons," sec. 12265, p. 1121.

⁶⁷ Chase, *op. cit.*, Vol. I, chap. liv, sec. 18, p. 179.

CHAPTER V

POOR ASYLUM ADMINISTRATION BEFORE STATE SUPERVISION

Poor asylum care, or the removal of indigent persons to county poor farms, was the earliest form of indoor relief available in Indiana. It was originally intended that all persons in need of public aid should be cared for in asylums established for the benefit of the poor. These institutions became the indiscriminate gathering-place of men, women, and children who represented all levels of physical and mental ability and varied widely in their moral and social standards.

Because of their poor physical equipment and because the management was in the hands of untrained superintendents, the problems and adjustments which are inherent in any heterogeneous group were intensified in the county asylums.¹ From the beginning, most of the poor asylums were run on the contract system, by which the superintendent paid the county a rent for the farm and was paid a per diem for the support of the inmates. The last contract of this kind expired in 1903.²

During the first half-century of poor asylum care in Indiana, no uniform records were kept. Here and there a single account was given, showing the conditions of a particular asylum at a particular time. Such accounts are inadequate, if a comprehensive study is desired; however, they reveal some of the problems characteristic of poor asylum care in general. The overcrowding of inmates, the lack of rooms and accommodations for sex separation, inadequate facilities for the care of the sick, the blind, and the insane, and deficient educational provision for children presented combined problems, the solution of which would today be considered a joint responsibility of doctors, teachers, psychiatrists, social workers, architects, business administrators, and others. Such a group would, no doubt, attempt

¹ A. Johnson, *The Almshouse—Construction and Management* (New York Charity Publication Committee) (Philadelphia, 1911), p. 5.

² Alexander Johnson, "The State Aged 100," *Survey*, XXXVI (April, 1916), p. 100.

to work out a plan whereby family life might be strengthened in the home, and specialized care provided when necessary. However, in the early history of poor-asylum care, the man who bid lowest for the care of the paupers was usually the one who assumed the entire responsibility for the welfare of the inmates of the poor farms.

It will be remembered that Indiana's first constitution authorized the establishment of asylums for those persons who by reason of age, infirmity, or other misfortune had a claim upon the aid or beneficence of society.³ Employment was to be provided so that persons might, through their usefulness, lose the degrading sense of dependence. The first legislative provision to this effect in 1821, applying only to Knox County, authorized the establishment of a house of employment.⁴ The act was made general in 1831⁵ and from that time on each county made its plans to build a poor farm, until each of the ninety-two counties in the state had its own institution.

The farm purchased in Indianapolis in 1832 had on its grounds a two-room log cabin which was to be used as a home for the poor. It was described⁶ as being merely a receptacle into which was thrust that inconvenient class in the community who, being unable to help themselves, were put away out of sight and dismissed from public concern. As long as the general public was not informed of the conditions within the asylums few changes were made. It was only after interested persons and representative groups investigated the actual conditions and understood the causes for the type of care and treatment being given that more constructive plans were suggested. The county commissioners had full authority to establish the kind of asylum they desired and to select the superintendent for it. In some counties they continued the system of farming out paupers in private homes, and in others the contract system prevailed. Warren County first gave relief to the poor in 1831 when the county commissioner ordered that a resident be paid twenty dollars for keeping

³ The Constitution of 1816, Art. IX, sec. 4.

⁴ "An Act to provide for the erection of a house for the employment of the poor of Knox County," January 9, 1821, *Laws of Indiana* (1820), chap. xlv, p. 102.

⁵ "An Act for the relief of the poor," February 10, 1831, *ibid.*, chap. lxix, p. 382.

⁶ W.R. Holloway, *A Historical and Statistical Sketch of the Railroad City* (Indianapolis, 1870), p. 192.

a transient pauper for five months.⁷ In that county the township trustee occasionally ordered persons to depart before they became township charges, but according to the later record of that county "that barbarous custom soon gave place to one of broader charity and humanity." The county records indicate that the annual county expense for poor relief was from twenty to seventy dollars, with the expenses increasing rapidly after 1837. While some counties placed their needy persons in asylums, Warren County provided for their poor through the farming-out plan. A poor boy who was farmed out for four months at a cost of twenty-seven dollars also received the following: "nursing service given him for three months amounting to thirty dollars; board for the nurse for thirteen weeks, thirteen dollars; a doctor bill of fifteen dollars; a total of eighty-five dollars." The account then credited him with one chest and fiddle valued at four dollars, also one coat and pair of trousers, worth seven dollars, leaving a balanced expenditure of seventy-four dollars, which was the highest amount given to any individual in that county prior to 1838. At that time poor asylums had not yet been authorized to secure the services of physicians for those persons who were in need of medical care, although that service was extended to some who were cared for in private homes.

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The first poorhouse in Hamilton County was to be erected according to the following specifications issued in 1846:⁸ "eight feet in the clear, eight foot story, made of round logs, rough plank boards, clap-board roof with one door and window to each room." The cost of constructing and finishing this asylum was twenty-four dollars. A superintendent, who was employed by the commissioners for a period of a year, was to have the buildings free of rent. The farm itself consisted of eighty acres of land. The superintendent was to board, clothe, and lodge the poor, an average of seven persons for three hundred dollars during the year, this amount being payable quarterly. In the superintendent's first report, issued in June, 1846, there are some interesting items which may well be mentioned here. There

⁷ *Counties of Warren, Benton, Jasper and Newton* (Chicago: A. F. Battery & Co., 1883), Part I, p. 66.

⁸ Augustus F. Shirts, *A History of the Formation, Settlement and Development of Hamilton County, Indiana*, chap. ix, p. 112.

were at that time eight paupers in the poorhouse; five had been sent there by the overseers of Clay Township, while White River, Wayne, and Noblesville townships had each sent one person. It was customary for the county commissioner to furnish the rooms used by the paupers, and the superintendent acknowledges the receipt of the following: four straw beds, four cords, two feather beds, four blankets, eight pillows, ten pillow cases, twelve sheets, four comforts, and twelve chairs. He requested that one more room be equipped for the poor under his care. As in the case of most asylums, the original building could not accommodate the numbers needing care, and a new structure was erected within a few years.

In Hancock County the superintendent was to be allowed two and one-half dollars a week for each person whom he clothed, fed, and lodged. Due to overcrowded conditions, the commissioners had to make separate contracts with individual householders to care for the poor for a year, while attempts were made to secure another farm. The Woman's Club of the Farmers' Institute, meeting at Greenfield, Indiana, where a more modern farm was located, years later made an effort to study the conditions at that asylum. By way of contrast, their report of 1907 is worthy of notice. The women voiced their objections to the term "pauper," because of the degrading effect upon persons who found it necessary to ask for public assistance. They were gratified with the tendency to avoid the poorhouse, since the township trustees were authorized to provide for the poor of each township in other ways than by removal to the poor asylum. They reported that most of the poor, especially children, were better cared for in a kindly and quiet way in their own homes. In this way, the breaking-up of family ties could be avoided. As a matter of business economy and common humanity they further recommended that the worn-out issues of a miserable pauper prison be changed into a more profitable institution, such as an industrial school for boys. They advocated the giving of relief in the home rather than in the form of institutional care.

The earliest poorhouses soon had to be replaced by larger buildings, as they could not accommodate the number of persons needing care. In some counties the system of contracting for the care of the poor came to be looked upon as the most desirable policy. When a

former superintendent lost possession of the contract with the Henry County Commissioners,⁹ he agreed to take care of all of the paupers at sixty-two and a half cents a person a week. This included board, clothing, lodging, and moral instruction. The commissioners appreciated the problems arising from such a system of selecting personnel, and accordingly agreed to prohibit this important assignment as being made on the basis of a contract or bid, and selected a superintendent whom they had reason to think qualified for the duties expected of him, and then decided on a salary which in their opinion would compensate him for his services in managing the poor farm.

Problems such as these were common in the early history of asylum care, not only in Indiana, but in every state where poor farms were established. One county after another erected a poorhouse which soon had to be rebuilt and enlarged to meet the growing demands. Developments and changes in the physical structure were followed by changes in methods of caring for the poor and the sick, which included educational opportunities for children, medical services for the sick, and special provision for defective and delinquent persons. This was not possible under the plan of asylum care which had already been established, but came about through the gradual removal of certain classes of the poor from the earlier poor law as special legislation was passed which provided for more individualized types of treatment.

The establishment of state institutions for special classes (except delinquents) began in 1844 with the opening of what is now called the Indiana State School for the Deaf.¹⁰ This was followed in 1847 by the establishment of the Indiana School for the Blind¹¹ under an act which classified these as educational institutions.

An act for the education of the blind,¹² passed in 1845, had authorized the treasurer and secretary of state to compose a board of trustees to superintend the application of funds raised for the group.

⁹ Elwood Pleas, *Henry County Past & Present 1821-1871* (New Castle, 1871), p. 55.

¹⁰ *Laws of Indiana* (1843), chap. lxxx, secs. 1-2, p. 75. "An Act to establish an asylum for the education of deaf and dumb persons in the state of Indiana," January 15, 1844, *General Laws* (1843-44), chap. xvi, p. 36.

¹¹ *Laws of Indiana* (1847), chap. iv, secs. 1-7, pp. 41-42.

¹² *General Laws* (1845-46), chap. lv, secs. 1-2, p. 67.

They were beginning to look toward the establishment of an institution for the blind, but until one was ready they were to be sent to similar institutions at Columbus, Ohio, or Louisville, Kentucky. This was the beginning of a system whereby individual groups were taken out from under the care provided by the poor law. The insane were to be cared for in the hospital erected in 1848.¹³ It is significant that the first law relating to the insane in Indiana, which had been enacted in 1845, authorized plans for the establishment of the Indiana Lunatic Asylum.¹⁴ Its name, however, was changed the following year to the Hospital for the Insane,¹⁵ showing that there must have been an awareness then of the need for care for insane persons that was more than merely custodial. Indiana is, in fact, said to have been the first state to use the term "hospital" in relation to the care and treatment of the insane.¹⁶

Medical care, authorized only in the beginning, was for specific institutions. For example, the law of 1845¹⁷ gave the county commissioners of Fountain and Jefferson counties the power to procure the attendance of a physician for the benefit of the poor. Unlike the extensive medical provision which the federal government had made possible during the past year, the early law was effective only in the county for which it was specifically adopted. The rate of pay for the physician was not designated, and the only requirement was that he be a good and reputable physician. It is interesting to notice the way in which the original provision was elaborated in the statutes which were later enacted. Commissioners were to pay designated physicians whatever they thought just and reasonable.¹⁸ Other physicians attending upon sick paupers would not be entitled to any compensation unless the regular physician was absent or unable to attend the patient. Many of the early decisions of the courts in Indiana presented the problems arising when a physician other than the

¹³ *Laws of Indiana* (1848), chap. lxxxvi, secs. 1-9, pp. 83-85.

¹⁴ *Ibid.* (1845), chap. lxxiii, secs. 1-2, p. 58.

¹⁵ *Ibid.* (1846), chap. cxviii, sec. 1, p. 116.

¹⁶ Frances D. Streightoff, *Indiana, A Social and Economic Survey* (Indianapolis, 1916), chap. xi, p. 217.

¹⁷ *Local Laws of Indiana* (1845-46), chap. liv, sec. 1, p. 44.

¹⁸ *Laws of 1845-49*, chap. ccxlv, sec. 2, p. 370.

one selected by the commissioners cared for the poor and expected to be paid from the county treasury for his services.

The generally accepted practice in regard to poor children was for them to be apprenticed, but for the education of those who were not bound out, the asylums were responsible either in the almshouse or in nearby schools.¹⁹

When children were apprenticed by the overseer of the poor, an agreement was made with the master or mistress to the effect that they would have the child learn to read and write, and that instruction should be given in the general rules of arithmetic "at least to the double rule of three inclusive." But colored children could not be sent to school with the white children, consequently the overseer of the poor had to provide for them in the asylum, as the master or mistress could not meet the requirements for their educational training. In order to remedy this, the overseers of the poor were authorized to make such requirements wholly optional and discretionary in so far as they applied to colored children.²⁰ This appears to have been the only instance in which any discrimination was shown in the early provision for the care of the poor, but it is not unlike many instances in which the needs of a group are ignored, rather than met by such treatment as would bring equal opportunities to all.

One of the earliest laws making it possible for destitute persons who were not insane to receive annual allowances in their own homes shows the beginning of a more flexible plan than is offered by poor-asylum care. In 1852 this form of relief was granted to parents whose children were idiots or otherwise helpless and in need of such care in the home as would not be possible unless the parents were given some assistance.²¹

Care for the blind in their own homes rather than in asylums was authorized in 1857²² in an act expressing the desirability of maintaining the family unit, rather than separating the handicapped members who, in order to receive help, had previously received it only when removed to the poor asylums.

¹⁹ *Laws of Indiana* (1834), chap. iv, secs. 1-2, p. 11.

²⁰ *Ibid.* (1834), chap. clxxiv, sec. 1, p. 14.

²¹ *The Revised Laws of 1852*, chap. cxxv, sec. 7, p. 494.

²² *Laws of Indiana* (1857), chap. viii, sec. 1, p. 18.

Plans for a house of refuge, having as its purpose the idea of reformation rather than correction only, were first made in 1855. It was hoped that the young convict, separated from vicious associates, might by careful physical, intellectual, and moral training, be reformed and restored to the community with purposes and character fitting him to be a good citizen and an honest and honorable man.²³

After the county commissioners were given the power to use special funds for the relief of the families of soldiers, sailors, and marines who were sick, disabled, or wounded, those who could be assisted in this manner were not to be sent to the county asylums nor to be given relief under the poor law.²⁴ After the erection of the Soldiers' and Sailors' Home at Knightstown,²⁵ dependent children and soldiers and sailors could be cared for there. In 1875 the county commissioners were permitted to subsidize private child-caring agencies at the rate of twenty-five cents a day for each child. At first they sent children to the Widows' and Orphans' Asylum at Indianapolis, which was the first to receive the subsidy. When the county commissioners were authorized to establish orphan asylums for pauper children,²⁶ those between the ages of one and sixteen years were to be taken from the poor asylums and placed under the care of a matron who was to be a woman of good moral character, sound judgment, and suitable age, having experience in the care and training of children, willing to accept the charge. She was to provide suitable and sufficient food and clothing, also the proper home training and education for the children who, if old enough, were to be sent to the regular district schools at least three months during the year, and when not in school be kept at appropriate work suited to their age and strength, so that they might learn to become useful, industrious, and self-supporting citizens. The younger children who were not in school were to be given her personal attention. She was to be allowed twenty-five to thirty cents a day for each child. If she did not have a suitable house of her own, the board of county commissioners would provide this, together

²³ *Ibid.* (1855), chap. xciii, secs. 1-4, p. 191.

²⁴ *Supplement to the Statutes of the State of Indiana* (1870), Vol. III, chap. cccxii, p. 493.

²⁵ *Ibid.*, chap. cccxiii, sec. 1, p. 494.

²⁶ *The Revised Statutes of 1881*, chap. xcv, secs. 6103-14, pp. 1308-11.

with a farm and a cow. No matron was to care for more than twenty-five children, and if it was thought to be to the advantage of the children to have them divided into smaller families, this could be done provided that the cost of their food and clothing did not exceed thirty cents a day.

An early placing-out system for dependent children gave the matron permission to seek homes for the children in the county where she resided. This was to be done in order to relieve the county of the cost of these children at the earliest practicable period. Before any placement could be made, the board of county commissioners were to give their consent, and to determine whether or not the person accepting the child was of good moral character and able to provide for the child until he would be of legal age.

Complete records were to be kept by the matron, which would include the name and age of the child, his parents' names, his place of birth, the date of his admission and reception, also the name and address of the person with whom the child was placed. Occasional visits to the foster home were to be made by the matron in order to examine into the condition and treatment of the children. Her investigations were to be supplemented by those of a board of visitors composed of three persons known for their charitable work and interest in benevolent institutions. Two of the board members were to be women who had had experience in raising children. They were to visit once every three months, giving their reports to the board of county commissioners. It is interesting to note how, in the absence of social case-work skill, devices to secure the most favorable result possible for the charges under the care of the public authorities were unavailing.

Medical aid, the cost of school books and of burial were to be provided by the county boards. The county's liability for the children ceased when they were placed in a suitable home or became of age. Such was the extent of the care offered to dependent children in 1889.

Children were among the latest to be rescued from the mass care given in the poor asylums, but were given the first attention by a later group whose duty it was to supervise the whole system of public charities in the state. It was only after their investigations that the

true conditions of the asylums became known, and further recommendations were made. In turning to a study of this advisory group and the later developments in the care of the poor, it should be kept in mind that the system of outdoor relief had altered but little since 1852. With the exception of some slight changes in the physical structure of the asylums, and the provision which made it possible for some of the inmates to be cared for in the state institutions or in local orphan asylums, the early inadequacies of poor asylum care remained.

CHAPTER VI

STATE SUPERVISION OF INDOOR AND OUTDOOR RELIEF

The development of the poor laws from the territorial days to the period of institutional growth was characterized by the systems of farming out paupers, contracting with private persons to care for them, of apprenticing children, gathering the poor in asylums, or by furnishing outdoor relief. Poor asylum care and outdoor relief, although modified, have been continued up until the present time, while the other systems have been wholly abolished.

Attention has been called to the development of state institutional care for selected groups: the deaf, the blind, the insane. Beginning with these three institutions, the state gradually but steadily extended its powers to care for other citizens needing more specialized care than could be given in the local asylums for the poor.

Along with the development of state institutions, there grew up a number of advisory boards which were each responsible for the management of a particular institution. Because these boards faced common problems in their work, a need was felt for the creation of a central authority. This development in Indiana was similar to that in other states, which, beginning with Massachusetts in 1863,¹ created central state supervisory authorities. In general, these provided for a continuous, lay, unpaid supervisory board, with some administrative duties. The boards of trustees of separate institutions remained as before, accountable for the selection of the staffs, the framing of policies, and the expenditure of public funds.² Because of the significance of the central board in Indiana, and its relation to

¹ "An Act in relation to state charitable and correctional institutions, April 29, 1863," *Acts and Resolves Passed by the General Court of Massachusetts in the Year 1863*, chap. 240. For summary of this development, see *The Organization for the Care of the Handicapped*, Third White House Conference for Child Health and Protection, p. 137.

² S. P. Breckinridge, *Public Welfare Administration in the United States: Select Documents* (Chicago, 1927), Introductory Note to Part II, p. 237.

the development of the poor law, attention will be given to a brief review of its history.

In 1867, the Meeting for Sufferings, later the representative body of Indiana Yearly Meeting of Friends, appointed a committee of six to organize a system for the reformation of juvenile offenders and the improvement of prison discipline.³ Through the efforts of this committee, at least in great part, the establishment of separate state institutions for delinquent women and for boys and girls was hastened, and many abuses in the state and county institutions corrected. Through their investigations were revealed the facts concerning serious corruption in the administration of the state prison and county jails. In a memorial concerning unsatisfactory prison conditions, the committee recommended, (1) the establishment of a central unpaid board which would have the oversight and care of all the prisons in the state and of discharged convicts; (2) the formulation of a classification of prisoners, so that the younger might be separated from the more hardened criminals, and development also of other measures tending to the improvement of the prison system.

While this recommendation was specifically in relation to the correction of prisons, it was the beginning of an expression for closer centralized supervision of all public welfare institutions and agencies. The committee which had made this recommendation continued its interest in this development, as shown in the minutes of the meeting, following the 1898 session of the General Assembly. "We thankfully record that to our surprise and gratification, the bill we had prepared passed both branches of the legislature with little opposition."⁴ In 1888, Oscar McCulloch, then president of the Associated Charities in Indianapolis, and active in the National Conference of Charities and Corrections, of which he became president in 1891, gave much of his time in support of the measure for a board of state charities, which was enacted and became a law February 28, 1889.⁵ While the powers of the board were only advisory, the Committee on Prison Reform

³ "A Memorial to the Senate and House of Representatives on prison conditions," *Minutes of Indiana Yearly Meeting* (New Vienna, 1872), p. 49.

⁴ Walter C. Woodward, *Timothy Nicholson—Master Quaker* (Richmond, 1927), p. 86.

⁵ "An Act to establish a Board of State Charities, prescribing their duties, appropriating \$4000 and declaring an emergency," February 28, 1889, *Laws of Indiana* (1889), chap. xxxvi, p. 51.

saw this as an opportunity for exercising an important influence on state administration. Its usefulness and accomplishments were to depend not upon administrative powers, but upon gaining the fullest co-operation of public officials and securing public confidence. The men and women appointed to the board were highly qualified for such a task. They had been actively participating in groups whose chief interest was to bring about a better program of care, of protection, and prevention for the handicapped groups, many of whom were already in the different state institutions. The value and usefulness of the board depended upon its personnel and upon its choice of secretaries, who were to carry out its policies. In both instances it was singularly fortunate. The charter members were: John R. Elder, Mrs. C. W. Fairbanks, Oscar C. McCulloch, E. B. Martindale, Timothy Nicholson, and Mrs. Margaret F. Peele. Alexander Johnson, the board's first secretary, had been engaged in social work, and his energy and enthusiasm, matched with a rich fund of sound judgment, contributed greatly to the successful work of the board. Attention should be called to the fact that during their forty-three years of service, the board had only four secretaries: Alexander Johnson—March 25, 1889, to July 1, 1893; Ernest P. Bicknell—July 1, 1893, to January 1, 1898; Amos W. Butler—January 1, 1898, to January 1, 1923; John A. Brown—January 1, 1923, to June 26, 1933. The first three secretaries, as well as three members of the board, have won the recognition of election to the presidency of the National Conference of Charities and Correction. Dr. Amos Butler was also president of the American Prison Association.⁶

The act establishing the Board of State Charities⁷ provided that the governor appoint six persons, three from each of the two leading political parties, to form a board to serve without compensation for a period of three years.

It was to be the duty of the board to investigate the whole system of public charities and corrections and to examine into the condition and management of both state and local institutions. To secure ac-

⁶ Oscar C. McCulloch (Indianapolis), 1891; Timothy Nicholson (Detroit), 1902; Francis H. Gavish (Indianapolis), 1916; *National Conference of Social Work, Index—1874-1933*, ix), Amos Butler, president, 1910 (*Proceedings of the Annual Congress of the American Prison Association* [Indianapolis, 1910], p. 5).

⁷ *Laws of Indiana* (1889), chap. xxxvi, p. 51.

curacy, uniformity, and complete information, the officers in charge of the institutions were to furnish reports and such information as might be requested by the board.

The salaried secretary, to be appointed by the board, was the only salaried member. An annual report, in which would be given the board's suggestions in relation to the institutions, showing the actual conditions found in their investigations, was to be prepared for the use of the legislature.

In speaking of the conditions which existed when the board was founded, Dr. Butler pointed out that the state institutions were under political control, and frequent scandals resulted.⁸ There was no provision for their inspection or supervision and the only means for an official investigation was through the legislature, which met biennially. There was neither uniformity in accounting nor standardization of work and methods. In the local charities the expenditure for official outdoor relief was enormous, many county institutions were in very bad condition, and the number of dependent persons was rapidly increasing. From every direction, during the years from 1880 to 1890, attention was being called to the need of reform in laws regulating the method of county and township business and the manner in which charitable work was to be conducted.

William Dudley Foulke, early interested in the Civil Service Reform League, had taken part in some of the investigations which were made at this time because of the careless and unbusinesslike methods which had pervaded the institutions. Favoritism, corruption, inefficiency, and recurring cases of neglect and cruelty to inmates were not uncommon. Unfortunately, the majority of the people showed little interest in civil service reform, and those who were aware of its values saw that the sentiment in favor of the merit system found scanty support in the public opinion of a community violently partisan and thoroughly committed to the spoils system.⁹

Indiana was at this time experiencing the results of a system which permitted benevolent institutions and the relief for the poor to be ad-

⁸ Amos Butler, "The Indiana Plan of Supervision," *Annals of the American Academy of Political and Social Science* (Philadelphia, 1923), p. 122, Public Welfare in the United States.

⁹ William Dudley Foulke, *Fighting the Spoilsmen—Reminiscences of the Civil Service Reform Movement* (New York, 1919), chap. ii, pp. 16-36.

ministered for the benefit of the party rather than for the benefit of the inmates or the public.

In 1885 there were exposures of widespread corruption among the township officials, and in his biennial message of 1887, Governor Isaac Gray seriously questioned whether or not the fraudulent transactions of the township trustees might not be due to the kind of township system then existing in Indiana.¹⁰ He advocated a return to a system that had been rejected, of having three trustees, a treasurer, and clerk rather than have those duties combined in the services of one official in whose hands was placed the entire management of township business without any check on his work.

Timothy Nicholson, a member of the Friends Committee on Suffering and a member of the first Board of State Charities, later recalled the difficulty in attacking the forces of political corruption and arousing the public conscience. He pointed out how this was attempted by a continuous effort to educate popular opinion and to stimulate official interest in the institutions. The board did not desire to force legislation in the face of popular dissent. Dr. Amos Butler described their policy as one not of revolution but of evolution. In addressing the National Conference of Charities and Correction in 1905,¹¹ he compared the work of reorganizing the charities of any state to that of remodeling a house. He said, "We cannot destroy all that has gone before even if we desired to do so. To conform it to our rules or to bring it up to our ideas, we must take everything as it is and try to fit it into the best plan we can create."

With such an approach, the Board of State Charities began its work, and through its influence and leadership, which was extended in various forms, progressive social legislation was passed and the citizens of the state were informed of the social conditions which were needing the interest of all. Through their educational program it was possible to create a certain amount of public opinion and secure improvement in the methods of poor relief and the abolition of certain abuses in both the local and state institutions.¹²

¹⁰ *Biennial Message of Isaac P. Gray, Governor* (Indianapolis, 1887), p. 33.

¹¹ *Proceedings of the National Conference of Charities and Correction* (1905), p. 592.

¹² For further reference regarding the development of the Board of State Charities, see Amos W. Butler, "A Study of the Development of Public Charities and Correction, 1790-1915," *A Century of Progress* (Indianapolis, 1916).

The development of the poor law has been traced from 1790 to the period of the more rapid growth of institutions, which began in 1844. Few changes occurred after 1852, when the township trustees became ex officio the overseers of the poor,¹³ until 1895, which marked the beginning of state supervision for public outdoor relief in Indiana.

In that year, on the recommendation of the Board of State Charities, a significant act was passed requiring the overseers of the poor to report both to the county commissioners and to the State Board of Charities all their expenditures for the poor, together with certain facts concerning those aided.¹⁴ One of the board's first undertakings was an effort to obtain data with reference to the relief of the poor,¹⁵ as administered by the township trustees. Before this time there had been no uniform records or accounts. The township trustees administered relief to those who came to them with only such perfunctory supervision as was given by the county commissioners or the advisory boards—and the funds were drawn from the county treasury. The act passed in 1895 required the township trustee to keep a record of those receiving relief from public funds, except inmates of public institutions who would be accounted for otherwise. These reports were to include the full name, the sex, the age, and the nationality. The date of giving the relief was always to be recorded; also the amount and whether or not it was in cash or in kind. Any articles given, and their approximate value, were to be listed. If the relief was given to one person for the use of others, the records had to show the total number of recipients as well as the other identifying information and the reasons why relief was necessary.

Two copies of this report were to be filed with the county auditor, where such relief was given. These were to be submitted once every three months by each person administering poor relief, and it was unlawful for the county commissioners to allow payments for relief

¹³ *Revised Statutes* (1852), Vol. I, chap. cxxv, sec. 1, p. 494.

¹⁴ "An Act to provide for a record of persons receiving aid from public funds, regulating expenditures for such and repealing conflicting laws," March 11, 1895, *Laws of Indiana* (1895), chap. cxx, p. 241.

¹⁵ This plan of investigation was conceived by Mr. Ernest Bicknell, then secretary of the board. Amos Butler, *Outdoor Relief in Indiana*, Proceedings of the National Conference of Charities and Corrections, 1900, p. 402.

until this requirement had been complied with. One of the copies, filed with the auditor, was to be transmitted to the Board of State Charities every three months.

The statistics which were compiled by the board after the first reports were received caused a sensation, for out of a total population of less than two and one-half million persons, more than thirty thousand persons were on the overseers' lists. In some localities the ratio of persons receiving relief was one in eight, while in some of the richest counties it was one in sixteen.¹⁶

These investigations showed such a surprising condition of affairs that the legislature of 1897 made a radical change in the source from which relief was to be drawn,¹⁷ and assigned to the township the responsibility for meeting the costs, as before the township had exercised for many purposes the responsibility for administration. Whereas the township trustee had previously drawn the funds for poor relief from the county treasury, it was now his duty to reimburse the county for all funds extended to him for this purpose. This made it necessary for the trustee to levy a tax on the entire property in the township, including cities and towns, with which he could, during the following year, reimburse the county. It was believed that such a system, in which the local units were made to pay the costs of relief, would attract greater attention from those to whom the officer was responsible, and thereby serve as a check on his activities and decrease the amount of relief given.

For ninety-eight years the township officers had administered relief for which the cost had been borne by the county.

In 1897 there were also two statutes enacted concerning indigent children. School books and clothing were to be provided by the school trustees of the township, or the commissioners of the city, for a temporary period. Then a report was to be given the Board of County Commissioners at their next meeting, and they would request an investigation to be made of each situation.¹⁸

¹⁶ Amos Butler, *Official Outdoor Relief and the State* (National Conference of Charities and Corrections, Chicago, 1915), p. 441.

¹⁷ *Laws of Indiana* (1897), chap. cli, p. 230.

¹⁸ "An Act concerning the education of children," March 8, 1897, *ibid.*, chap. clxv. p. 248.

Not until 1897 was a law enacted¹⁹ forbidding the detention of children in poorhouses. It will be recalled that in 1833, St. Joseph's, a Catholic orphan asylum, had been erected. While other than Catholic children were also received, most of the charges there were Catholic. The first private orphanage under nonsectarian control was the Indianapolis Widows and Orphans Asylum, incorporated in 1851.²⁰ In 1875²¹ counties were empowered to subsidize private orphanages, and in 1881²² the power to establish county homes was authorized. While each county home was intended to be a training school in decent living, and a temporary measure to be followed by the placing-out of a child in an adoptive home, the per capita plan had its usual results. It was found that the children were sometimes held for the money which was earned through caring for them, whereas they might have been placed out with advantage.

Further regulations in connection with the management of the poor asylums were made in 1899.²³ The act specified the method of

¹⁹ "An Act to authorize the better care and control of orphan, dependent, neglected and abandoned children, providing for the establishment, government, and maintenance of an association and asylum, the appointment of agents, an appropriation for the payment of the expenses of such agents, regulating the retention of children in county poor asylums, repealing all laws in conflict and declaring an emergency," February 23, 1897, *ibid.*, chap. xl, p. 44.

"An Act regulating the transfer of dependent children in orphans' homes and other custodial institutions for dependent children from one school corporation to another, providing for their education, authorizing appeals, the settlement of disputed claims, and declaring an emergency," February 6, 1903, *Laws of Indiana* (1903), chap. viii, p. 15.

"An Act concerning the support of orphan and dependent children," March 7, 1903, *ibid.*, chap. cvi, p. 204.

²⁰ Act incorporating the Widows and Orphans Home, 1851. *Local Laws of Ind.* (1851), chap. cxcviii, p. 375.

²¹ *Laws of Indiana* (1875), chap. cxix, p. 169.

²² *Laws of Indiana* (1881), chap. vii, p. 10.

²³ "An Act to regulate the management of county asylums for the poor, defining the method of appointing the Superintendent and other officers, defining certain duties of the commissioners of the counties, prescribing the methods of purchasing supplies and selling products, the discipline and employment of inmates and other matters pertaining thereto, and repealing all laws or parts of laws in conflict therewith," February 23, 1899, *Laws of Indiana* (1899), chap. lxxvi, p. 103.

"An Act to provide a Board of County Charities and Corrections and define the powers and duties of said Boards," February 17, 1899, *ibid.*, chap. xxxiv, p. 50.

appointing the superintendent and other officers, prescribed methods of purchasing supplies and selling products, and also prescribed rules for the discipline and employment of inmates.

During this time changes were made in connection with the methods for doing county and township business.²⁴ A county council, made up of three members elected by the county at large, were to present the auditor with the appropriations which would be needed for the next year. The attempt to reform county government through securing some measure of budget control was brought about primarily by the scandals of 1898, which revealed the improvident contracts for the construction of jails and other buildings as well as the excessive and demoralizing distribution of the poor fund in many localities.²⁵

Taxation and the right to borrow money for the county was vested exclusively in the county council. The total amount of county indebtedness could not go beyond 2 per cent of the total taxable property of the county, and the auditor therefore could not permit appropriations to be overdrawn. Under the act concerning township business, three persons were to be elected, by township electors, to serve as an advisory board. They were to estimate township expenditures and lay the taxes found necessary, including taxes for poor relief which had been spent the previous year and advanced to the township by the county treasury. At its annual meeting the township advisory board was to receive from the township trustee a complete report of the number and conditions of the paupers in the township. In order to have uniform financial records, the trustees were requested to keep a record of every sum of money received, showing its source, the date and amount, and an account of the fund to which it was credited. Shortly after this act was passed the attorney-general was asked to interpret its meaning as it related to the administration of the poor law.²⁶ He suggested that its obvious purpose was to prohibit discretionary allowance by the county boards. Poor relief was to be dispensed by the overseers of the poor, and

²⁴ *Ibid.*, chap. cliv, p. 343, and chap. cv, p. 150. An act concerning township business.

²⁵ John A. Lapp, "Checks on County Government in Indiana," *Annals of the American Academy of Political and Social Science* (Philadelphia, 1913), chap. xlvii, pp. 248-50.

²⁶ *Biennial Report of the Attorney-General, 1899-1900*, p. 70.

the expense of relief administration was to be borne by the townships.

The manner in which requests for relief were to be investigated by the overseers was clearly set out by an act regulating the administration of relief,²⁷ passed in 1899. Private social agencies had been assisting many persons in the larger cities, but in the rural sections this service had not yet been developed. Members of the State Board of Charities and others interested in the relief work had observed methods used by these social agencies and saw through their principles some practices which they believed should be used by the overseers of the poor. These included an adequate social study of the applicant's need and the provision of work for able-bodied applicants, if suitable arrangements could be made. It was made the duty of the township overseer to co-operate with social agencies in the township in order to eliminate the unnecessary duplication of relief and to prevent the development of dependent persons because of misdirected relief.²⁸ Today the social service exchanges are used to foster such co-ordination in treatment. It is evident that one of the chief duties of the overseers was to secure employment for the applicant, whenever this was possible. The willingness to work was thought to test the applicant's need, which would be granted only where the personal effort of the applicant failed to provide one or more of the following items of relief: simple food necessary to sustain the person or his family in a healthy physical condition, or the fuel necessary for heating or cooking purposes, or such simple and

²⁷ *Laws of Indiana* (1899).

"An Act to regulate the administration of the relief of poor persons and prescribing certain duties of the overseers of the poor and other officers in relation thereto," February 24, 1899, chap. xc, p. 121.

"An Act to amend section thirty-one (31) of an act entitled, 'An Act for the relief of the poor' approved June 9, 1852, in force May 6, 1853," February 24, 1899, chap. lxxxvii, p. 118.

"An Act to amend Section ten (10) of an act entitled 'An Act to provide for the more uniform mode of doing county business, prescribing the duties of certain officers in connection therewith and to repeal all laws conflicting with this Act approved February 18, 1859, and declaring an emergency,'" February 22, 1899, chap. lxxxi, p. 93.

²⁸ Frank A. Fetter, "Report of the Committee on Public Relief of the Poor in Indiana," *Indiana Bulletin of Charities and Correction* (June, 1898), pp. 68-71.

A. F. Dalton, "Township Poor Relief," *Report of the 15th Annual Session of the Indiana State Trustees Association* (Crawfordsville, 1906), p. 64.

ordinary clothing as is necessary for health and decency, or necessary shelter, the cost of which shall not exceed the lowest price available. The overseer was to call upon the residents of the township and the private relief agencies to assist him in securing work for the able-bodied. Able-bodied non-resident persons were to be provided with some form of hard manual labor and not otherwise assisted. Evidently the penalty for being a non-resident poor person was to be paid through strenuous physical activity. There had been little advance in the attitude toward non-resident persons. Every township held to the theory that it would only provide for its own poor. However, special provision was made for the care of the sick, the aged, and the crippled non-resident persons. They could be sent on to their place of legal residence after this had been determined through correspondence or otherwise. If it could be shown beyond reasonable doubt that such persons had some valid claim or means of support in some other place, rather than in that of their legal residence, the overseers were authorized to arrange for transportation accordingly. Temporary care for non-resident poor persons was to be provided in the county asylums, and overseers were still authorized to deport, at the cost of the county, poor persons likely to become chargeable, to their place of settlement, if it could be done conveniently.

In one of his reports on official outdoor relief, Dr. Amos Butler points to the law of 1899 as one under which modern ideas of helping the poor were applied to the work. He stated that experts had declared this measure to be the most advanced piece of legislation on the subject in any state in the Union. It was said to be the first instance of the enactment of charity organization principles into law, and their application to an entire state.²⁹

Because so few states have had regular poor-relief reports available, it is particularly interesting to examine those which were made available after 1895, when the overseers were required to give regular reports to the county auditor, who transmitted one copy to the secretary of the Board of State Charities. In 1895-96,³⁰ these reports showed that official outdoor relief, or that given to persons not in institutions, was provided for 71,414 persons at a cost of \$355,255.

²⁹ Amos W. Butler, *A Century of Progress*, p. 146.

³⁰ *Board of State Charities of Indiana, Seventh Report, 1895-96*, p. 75.

The average value of aid to each person assisted was \$4.97, and of the total number aided 8,880 had been assisted because of sickness and burials, 1,962 because of lack of employment, and 2,427 due to old age. Over 3,000 persons had been given transportation, probably because they had no legal settlement in the township in which they requested aid. According to the overseers' reports, 52,774 of the total number aided were Americans, 2,329 were Irish, and 4,569 Germans, while the occupations of those assisted included farmers, housekeepers, skilled tradesmen, professional persons, and laborers. Ten years later,³¹ the number receiving outdoor relief in Indiana had dropped from 71,414 to 45,331, but the average value of aid given to each person increased from \$4.97 to \$5.51. Sickness and burials had caused an even greater number of persons to request relief, while lack of employment had only caused 622 persons to need public aid. From 1895 to 1905 relief costs dropped from \$630,168 to \$249,884. The many factors which probably entered into such a reduction of relief cannot be definitely determined without further study of this particular period, but is evident that relief expenditures were greatly reduced immediately after the Board of State Charities began to exercise its supervisory functions.

Information which was necessary before constructive plans for relief could be outlined had not previously been accessible. The statutes which provided a means of checking the accounts of the overseers made available the statistics which gave opportunity for studying the state's problem of pauperism as well as a method of supplying relief without encouraging dependence. One further check upon relief expenditures was provided in 1901 by requiring the township trustee to present a statement of the case to the county commissioners if aid had been given to the amount of fifteen dollars and further assistance was necessary. This amount did not include expenditures for burial, medical care, or assistance to children under the compulsory education act. It was unlawful for the overseers to give further aid until so authorized by the county commissioners. The county

³¹ *Ibid.*, *Seventeenth Report*, 1905-7, p. 8.

See also, "An Act for the Relief of the Poor, Repealing all laws in conflict therewith," March 9, 1901, *Laws of Indiana* (1901), chap. cxlvii, sec. 11, p. 326.

council was to appropriate money for poor relief for the coming year, and from time to time, as the trustees filed their reports, the commissioners were to pay the bills from the funds so appropriated. The meaning of this law was that the commissioners should supervise the expenditure of the poor fund and bear with the trustees some of the responsibility for the proper relief of the needy.

The legislature of 1899 had provided for boards of county charities and corrections to visit the poor asylum, jail, orphans' home, and any other institution existing in the county which received public support.³² The judge of the circuit court was to appoint six persons to act as a board, and its establishment was made mandatory on the petition of fifteen reputable citizens. This board was required to report its findings to the county commissioners at least quarterly, and to the circuit judge annually, as well as furnishing a copy of these reports to the Board of State Charities.

The supervision of the state board extended not only to those receiving outdoor relief but also to all dependent and neglected children who were maintained at public expense.³³ The Board of State Charities had power to appoint one or more agents to inspect orphan asylums, to seek permanent homes for children, to visit children in family homes, and to report their condition both to the county and state board. It was made illegal to keep children between the ages of three and seventeen years in the county poor asylum longer than ten days. Later this was extended to sixty days.³⁴ A board of chil-

³² "An Act to provide for a Board of County Charities and Corrections and define the powers and duties of said boards," February 17, 1899, *ibid.* (1899), chap. cxxxiv, p. 50.

³³ "An Act to authorize the better care and control of orphan, dependent, neglected, and abandoned children, providing for the establishment, government, maintenance of associations and asylums, the appointment of agents, an appropriation for the payment of the expenses of such county agents; regulating the retention of children in county poor asylums; repealing all laws in conflict therewith and declaring an emergency," February 23, 1897, *ibid.* (1897), chap. xl, p. 44.

³⁴ "An Act to amend Section seven (7) of an act entitled 'An Act to authorize the better care and control of orphan, dependent, neglected and abandoned children, providing for the establishment, government, maintenance of association and asylum, the appointment of agents, an appropriation for the payment of the expenses of such agents, regulating the retention of children in county poor asylums, repealing all laws in conflict therewith and declaring an emergency,' approved February 23, 1897," March 11, 1901, *ibid.* (1901), chap. ccvi, p. 460.

dren's guardians was to be set up in every county.³⁵ The juvenile court law of 1903³⁶ provided that no associations should hereafter be incorporated in the state, with the approval of the board, if its object was for the caring of dependent, neglected, and delinquent children. The Juvenile Court in 1907 was made the sole authority for making dependent and neglected children public wards and placing them on public support. This had previously been vested in the township trustees, county commissioners, circuit judges, police judges, justices of the peace, and orphans' home associations.

County commissioners in 1903 were authorized³⁷ to establish and maintain county hospitals, as a part of the program to give medical care to the sick poor of the state. The earlier provisions for employing physicians have been mentioned in connection with the care afforded in the county asylums as well as in the person's own home. Aside from the provisions regulating the county hospitals, only a few minor changes were made in the poor law between 1905 and 1930.

The county jails, which have not been a credit to the state, were after 1909 to have a more thorough supervision.³⁸ The Board of State Charities was to report the conditions of these jails to the circuit or criminal court on whom was conferred the power to cause the necessary corrections to be made. If this is not done within a reasonable time, the governor is authorized to condemn the jail and remove the prisoners to another county jail until this is done. The judge, assisted by the Board of State Charities, is to adopt rules and regula-

³⁵ "A Bill for an Act to establish a Board of Children's Guardians in each county," March 11, 1901, *ibid.*, chap. clxiii, p. 369.

"An Act concerning dependent children, the placing of them in custodial institutions and fixing a compensation for their support and declaring an emergency," March 12, 1903, *ibid.* (1903), chap. ccxlvii, p. 537.

³⁶ "An Act providing for a Juvenile Court," March 10, 1903, *ibid.*, chap. ccxxxii, p. 516.

³⁷ "An Act authorizing the establishment and maintenance of hospitals by Boards of County Commissioners in the respective counties, either with or without the aid of hospital associations and authorizing such boards to receive and accept aid and donations from them and providing for the management and control thereof and the manner of raising funds to pay for expense of same," March 4, 1903, *Laws of Indiana* (1903), chap. lxxxvi, p. 167. See below. Part II, p. 136.

³⁸ "An Act relative to the management of county jails, providing for the supervision over and regulating county jails, the confinement of persons in such jails and matters connected therewith," March 8, 1909, *Laws of Indiana* (1909), chap. clxiv, p. 397.

tions for the conduct of the jails, which are to be observed and enforced by the sheriff and all persons acting under his authority.

In townships where cities of the first or second class were located, the township trustees were permitted by acts of 1921³⁹ and 1925⁴⁰ to pay the investigators of the poor out of the township poor fund on legal requisitions, approved by the board of county commissioners. The provisions and benefits of the federal maternity and infancy act were accepted in 1923, and the legislature provided that the proper agencies be designated to receive federal funds and to administer the act.⁴¹

The growth and changes which took place in poor law development between the years of 1880 and 1900 represent a difficult yet a heroic period in the promotion of public welfare activity.

With the establishment of the Board of State Charities in 1889, and its intelligent understanding of the conditions then existing, a new motive and method of procedure was developed in relation to the persons in the state needing public assistance. The work of the township trustees, who were the overseers of the poor, had long been unsupervised and was now made a part of a more efficient welfare program which gave greater protection to the person aided as well as to the public. Besides extending supervision over the local and state institutions, a more satisfactory program for child care and protection had been realized. One of the most destructive aspects of the earlier poor law practices, namely, that of advancing personal profit and political patronage through public welfare activities, had been eliminated. With public opinion made aware of such situations and desirous of change, the time was ready for a new type of social service program to emerge.

³⁹ "An Act to permit township trustees in townships of the first class containing cities with a population of 300,000 or more, to pay the investigators of the poor out of the township poor fund on legal requisitions; approved by the board of county commissioners of the county in which said township is situated and declaring an emergency," March 6, 1923, *ibid.* (1921), chap. lxxxviii, p. 259.

⁴⁰ *Ibid.* (1925), chap. clxiii, p. 400.

⁴¹ "An Act accepting the provisions and benefits of the act of Congress providing for the promotion of the welfare and hygiene of maternity and infancy, designating the proper agencies to receive federal funds and to administer the act and provide for carrying the act into effect," March 2, 1923, *ibid.*, chap. lx, p. 175.

CHAPTER VII

JUDICIAL DECISIONS IN RELATION TO THE POOR LAW

The decisions of the courts in poor law cases make an important contribution to the law governing the administration of relief, and the development of poor relief practices is, of course, determined not only by the legislative body but by the judiciary as well.

The cases brought before the Indiana Supreme Court during the past century may be classified, in general, as those bearing upon the relation of the township trustees to the county commissioners in (1) apprenticing children, (2) contracting for the care of paupers, (3) giving medical aid for the sick, (4) furnishing free counsel for the defense of the poor, and (5) providing for the care of insane persons. The problems relating to medical care and free counsel for the poor arose frequently, and the court re-emphasized its interpretation of the philosophy back of the legislative provisions under which these questions arose. If the judicial decisions had only been widely known and understood by local officials, it would not have been necessary to bring so many similar situations to the Supreme Court. This litigation is evidence of the fact that each local group worked quite independently and was often uninformed regarding the interpretation given by the court to the act it was trying to administer. It is interesting to note here that after there was a central supervision of outdoor relief and an official who obtained antecedent advice, such information was brought to the attention of the local officers and the volume of litigation declined. For example, since 1889 there have been very few cases taken to the Supreme Court or to the Appellate Court, which was established in 1890. It is obvious that before such supervision was given the division of responsibility between the county commissioners and the township trustees was obscure. This was particularly true in relation to the furnishing of medical care. It is not surprising, then, that there was great confusion on the part of physicians, who too often found that the treatment which they

had given had not been properly authorized, and so could not be paid for.

While some types of cases were recurrent in the court, others were presented only once or twice. This was true concerning such questions as the county's right to sue a family to recover the costs for the support of a pauper member.¹ Soon after Indiana became a state, provision was made for the care of the poor in poor asylums. The question was raised whether or not the cost of care in a poor asylum could be recovered from the family, and it was decided that this provision was a charitable one and that no person was liable to be sued by the county for the purpose of recovering compensation furnished in the support of a pauper.

In 1849, for example, the commissioners of Switzerland County brought an action against Benjamin Hildebrand for the cost of the board and lodging of his wife, who had been taken to the county almshouse. The report does not state the reason for Mr. Hildebrand's failure to support his wife, but it is interesting to note that the court took a different view from that taken by the Ohio court when a similar question had arisen² and the court had found the husband liable under the common-law doctrine of necessities. In Indiana, the court held that the commissioners "could not operate a boarding house for pay." "The support of the poor of the state must be considered a public charity," they said, and so, when it had been decided that Mrs. Hildebrand was a fit object of this public benevolence, Mr. Hildebrand was not to be held liable for repayment. If the woman was considered by the overseer as a proper subject for the poor asylum, which she must have been, to be placed there, no person was liable to pay for her support.

After many years, in another case,³ a guardian, Ristine, had been appointed for John Hulett, a person of unsound mind and incapable of managing his own estate. Hulett was unable to take care of himself, was dangerous and indecent in his habits, and Ristine, who had no suitable place in which to confine the ward and could find no

¹ *Switzerland County Commissioners v. Hildebrand*, 1 Indiana 555 (1849). See below, p. 201.

² Aileen Kennedy, *The Ohio Poor Law and Its Administration*, p. 137.

³ *The Board of Commissioners of Montgomery County v. Ristine, Administrator*, 124 Indiana 242 (1890). See below, p. 278.

capable caretaker, appeared before the board of commissioners and stated that his ward had an estate sufficient to pay his own board and room. An agreement was reached whereby the guardian was to pay three dollars a week for his board and care in an asylum under the supervision of a superintendent. An order to this effect was made upon the commissioners' records. When the ward died in 1887, leaving an estate valued at three thousand dollars, the board of commissioners filed a complaint for the amount due them, the board having fully complied with its agreement. The guardian denied his liability, however, and the court agreed that the claim of the commissioners was not a valid claim. The court argued that while the statutes relating to the care of dangerous insane persons at public expense made provision whereby the public treasury might be reimbursed out of the estate of such a person, in case he had one,⁴ a distinction should be made between the procedure taken in this case as compared with that which could have been taken if the statute mentioned above had been complied with. The county board was given no statutory authority to admit anyone into the county asylum by contract or for pay. Such institutions were established for the avowed purposes of administering charity, and unless specially authorized by charter to do so, they could not contract to bestow what purported to be a benefaction for a price, or dispense charity for pay. "The organization and maintenance of a county asylum for the poor, and the care and support of those who are admitted into them, is a part of a scheme of unmixed public charity and benevolence which was inaugurated under the express sanction of the Constitution." This general principle was previously noted in the case in which the court ruled that a husband could not be held liable for board, lodging, and support furnished to his wife in the county asylum. This decision rendered in 1849 has thus been held by the courts as the correct interpretation of the spirit and purpose of the constitution and the laws, so that in 1881 the court expressed itself as not being ready to make any change. "When it is thought advisable to change the policy of the state so as to authorize county asylums to be converted into places for confining and keeping insane persons under contract, or for boarding those who are not agreeable to other

⁴ *Revised Statutes* (1881), chap. xcv, secs. 5142-50, p. 1303.

members of the family, the change ought to be made by the Legislature and not by the courts. . . . An institution or society, no more than an individual, can assume to be dispensing charity and at the same time create pecuniary obligations against one to whose necessities it ministers. . . . Services which were intended to be gratuitous at the time they were rendered cannot afterwards be used as the basis of an implied promise to pay."

The question of a county's responsibility for paying an unauthorized person to care for paupers,⁵ arose when the Knox County commissioners refused to reimburse a private citizen for services which he had thus given.

Mr. O'Brien, a pauper, had, for over a period of a year, been cared for in the poorhouse. He then left the institution to stay with a private citizen, Mr. Jones, who had received a certificate from one of the township trustees authorizing him to keep Mr. O'Brien during his last illness. However, when he became ill, Mr. O'Brien was taken back to the county poorhouse by the superintendent.

Mr. Jones then rendered his bill to the county commissioners, who rejected the claim as unauthorized; Mr. Jones sued the board of commissioners for \$16.00 and the lower court allowed his claim. On appeal, however, a reversal resulted, on the ground that the trustee could not authorize Mr. Jones to care for a pauper who was recognized in the county and for whom the poorhouse superintendent was responsible. Because Mr. Jones was under no duty to care for the pauper he had no basis for action. Likewise, the trustee had no authority to certificate county liability for pauper care in this case.

The extent of an asylum superintendent's duty in relation to certain unsettled poor⁶ was a subject brought before the court in 1863. Mr. Reiniche, the county superintendent, who had signed a contract with the board of commissioners for the care of the poor, claimed that he was entitled to additional pay for the temporary care which he had given to non-resident persons who had been placed in the poorhouse by the overseers of the poor.

He claimed that his contract did not include care for non-resident paupers and that this was the responsibility of the county. Both the

⁵ *Knox County Commissioners v. Jones*, 7 Indiana 3 (1855). See below, p. 211.

⁶ *Reiniche v. The Allen County Commissioners*, 20 Indiana 243 (1863). See below, p. 219.

lower court and the Supreme Court rejected his claim, however, as overseers could make use of the poor asylum for temporary relief as well as for the permanent poor, and the superintendent's contract with the board of commissioners covered this provision as well as that for permanent care.

The only case regarding the conduct of an asylum superintendent and the question of whether or not a disciplinary measure used by him was actionable on a charge of assault and battery was presented in 1877.⁷

John Neff, the asylum superintendent in Boone County, was indicted for an assault and battery on Elizabeth Wyatt, who was alleged to be ungovernable, and exercised a demoralizing influence on other paupers. He claimed that his beating and striking her was "moderate and gentle coercion" for the purpose of preserving quiet, and he averred that he legally had the right to do this. Both the lower court and the Supreme Court agreed with this view and held that a keeper of an asylum for the poor had a right to enforce proper discipline in his establishment similar to that in such other relationships as a child who is chastised by its parents; an apprentice or pupil who is corrected by the master; or a convict who is punished by the proper officer, provided the discipline be moderate in manner.

The rate of compensation for township trustees was defined in 1886.⁸ Mr. Bromley, a township trustee of Montgomery County, had served in that capacity in addition to performing his duty as overseer of the poor. He had received compensation from the township fund for his duties as township trustee and he claimed, in addition, payment for 300 days' services as overseer of the poor by the county board. The claim was rejected, however, and while the Circuit Court thought it justified, the Supreme Court reversed the decision and explained that the law relating to the compensation of township trustees, effective at that time, required that separate accounts be kept for each class of services rendered by the township trustee. Under the statute only two dollars could be paid for an actual day's service, regardless of whether or not both classes of services were rendered on one day.

Since the township trustee intermingled his services as trustee and

⁷ *The State v. Neff*, 58 Indiana 516 (1877). See below, p. 241.

⁸ *Board of Commissioners of Montgomery County v. Bromley*, 108 Indiana 158 (1886).

overseer of the poor and received full compensation for his services from the township fund, he was not, in this case, entitled to receive any more.

In 1886 the commissioners of Posey County disallowed claims which were presented by persons who had furnished supplies to poor persons at the request of the township trustees.⁹ An appeal was then taken to the Circuit Court where it was found that the allowances, which had been required by the trustees, were furnished for the purpose of defraying the expenses and transportation of certain persons to their homes in other counties of the state or in other states; also for goods which had been issued to transients and resident paupers who were at the time in need of temporary aid. Some relief had been granted at their places of residence, since removal to the county asylum would have been inexpedient and more expensive due to its distance from the town. To do this was not illegal and it was held that the full amount should be paid.

It was the opinion of the court that any construction of poor laws must recognize the legislators' intention to the effect that the poor of each county and township should receive all necessary relief at the expense of the proper county. The nature and extent of the relief should be in each case largely intrusted to the sound discretion and practical judgment of the township trustee as overseer of the poor. The court further suggested, "We think if people call competent and faithful persons to the discharge of the duties of this office, there will be little cause of complaint under this rule." The type of relief granted should be such that it would serve the best interests of the poor persons as well as the community at large. Such a principle is quite in keeping with the modern attitude toward the need for individual treatment, which is recognized as a basic concept of social work.

The responsibility of the county commissioners, in relation to their duty toward appropriating funds for needy school children, was determined by the Supreme Court in 1900.¹⁰ During that year there were 1,139 children of school age living in Shelbyville, of whom twen-

⁹ *The Board of Commissioners of Posey County v. Harlem et al.*, 108 Indiana 164 (1886). See below, p. 271.

¹⁰ *The Shelby County Council et al. v. The State ex. rel. The School City of Shelbyville*, 155 Indiana 216 (1900).

ty had been without the books and clothing necessary for attending school, and their parents were too poor to furnish these articles.

The school authorities stated that more than one hundred children entitled to attend school the next year would need books and clothing to enable them to continue, and that this would require the sum of \$500. The county council had made no appropriation at its last meeting for the purpose of reimbursing the school city of Shelbyville for any temporary aid it might furnish to such indigent pupils, and the board of commissioners had not attempted to make any estimate or itemized statement of the amount required, although they were fully aware of the facts and of the needs and demands.

The council and board denied that the county was liable to reimburse the school corporation for moneys so expended, and the auditor refused to call a session of the council to make such an appropriation.

The court had rendered judgment in favor of the school corporation and ordered a peremptory writ of mandate requiring the board of commissioners, county council, and auditor, respectively, to make estimates of the amounts necessary to furnish books and clothing for the children of poor parents and to make appropriations for these, drawing the proper warrants upon the funds so appropriated.

It should be noted that the school corporation had not furnished any aid to poor children in 1900 and had not filed, with the auditor, any list of children aided by it. Their action was taken in anticipation of their needs for the next year.

In view of this the council appealed and a reversal judgment was given. It followed that because the law does not lay upon the board of commissioners the duty of ascertaining the names of children in need of temporary school aid, it had no duty to perform nor any power to act. On the other hand, it was pointed out that it is the duty of the school trustees to make out and file with the auditor a list of the children aided. The board of commissioners then are to investigate such cases and make the necessary provision to enable children to attend school. The commissioners were likewise held responsible for reimbursing the school city but only after it has laid out the money and filed the proper requests with the auditor.

Burial costs have always occasioned difficulty. In 1903 the court acknowledged the right of the township trustee to contract for the

services of an undertaker to bury an honorably discharged soldier at the expense of the county.¹¹

The county board had disallowed the claim, basing its decision upon the adequacy of the estate of the deceased to pay the funeral expenses, and the Circuit Court upheld the county board. The Supreme Court, however, reversed the decision, and recognized the right of the township trustee, as overseer of the poor, to exercise discretion in cases of this kind. So long as no fraud or collusion was evident the county board had no right to interfere with the discretion of the township trustee.

In 1933¹² the Supreme Court had occasion in a discussion of the recently enacted Commissariat Act¹³ to reaffirm the relative obligations of the county and township, when a creditor representing many individuals and agencies who had supplied necessities for the poor of the township, and had not been paid, sued both county and township officials. The court said again that the duty of the county was to supply a poor asylum and maintain in that institution such persons settled in the county as had been lawfully placed there, and to advance to the townships the funds necessary to relieve all others needing relief. It was the duty of the township to care for all others and to repay to the county the sums advanced. This case also upheld the constitutionality of an act authorizing the resort to the commissariat method of relief.

It is not possible, however, nor necessary in this study, to present each of the poor law cases, sixty-one in all, in which the Supreme Court has been asked to give a decision. It has seemed more advisable to select representative cases which cover the wider range of problems needing the court's interpretation. These have already been suggested and will be reviewed more fully at this point.

As stated before, the provision with reference to the medical care of the sick poor was not clearly understood by many of the township trustees, county commissioners, and physicians. Litigation with

¹¹ *Gardner et al. v. Commissioners of Knox County*, 161 Indiana 149 (1903). See below, p. 295.

¹² *Wayne Township v. Brown*, 205 Indiana 437 (1933). There is interesting constitutional discussion in this case. See below, p. 302.

¹³ *Indiana Acts* (1931), pp. 66, 188; *ibid.* (1932), p. 186; *ibid.* (1933), chap. 203, p. 981; *ibid.* (1933), p. 677.

reference to the division of responsibility between and among these three groups was frequently the result. Naturally, emergency situations arose for which the physician, properly employed by the county, was not available to give immediately the service needed. If another physician or surgeon served at such a time, were his services to be considered as voluntary? Was he to continue with the medical care of such a patient or was further treatment the responsibility of the regularly employed physician of the county? Whose duty was it to determine who needed medical care? The extent to which the regular provision for medical care could be applied to non-residents had to be clarified as well as the question concerning the right to treat poor persons, temporarily in need of aid, without removing them to the county poor asylum.

In 1856 the question was raised of county liability for medical services rendered a "pauper," at the request of a township trustee as overseer of the poor. In this case, however, the basis of decision was the validity of the proof of claim.¹⁴

A claim upon the board of commissioners for medical services rendered to a pauper at the request of a township trustee as overseer of the poor was considered by the court in this case.

Dr. Chitwood and Dr. Porter presented to the board a pauper claim for medical services which was disallowed. The case was taken to the Circuit Court of Fayette County and judgment was rendered in favor of plaintiffs. On appeal to the Supreme Court, however, the judgment was reversed with costs and the cause remanded.

The question involved was whether the certificate of the clerk of the board of trustees of Connersville Township, stating that the account of the plaintiffs was well founded and duly presented to the overseers of the poor, was satisfactory evidence that the claim should be granted. One trustee had secured the services. However, the court held that this was insufficient. The civil township was held to be a corporation represented by a board of trustees and required to keep a full record of proceedings. "They, like the board of commissioners, can only speak by their record." Since the record contained no statement of the claim, it could not be admitted as evidence. The

¹⁴ *The Board of Commissioners of Fayette County v. Chitwood and Another*, 8 Indiana 504 (1856). See below, Part II, p. 213, for extended discussion.

court held that since the county commissioners are the guardians of the county treasury, if the board of trustees of a township acts upon a claim, that action is inconclusive. As there was inadequate proof of the correctness of the plaintiff's accounts, the judgment of the circuit court was disallowed.

The following year a question of claim for surgical services rendered a pauper was presented.¹⁵

Dr. Mullen, after rendering surgical services to a pauper, sued the county board in the justice's court where he recovered judgment, and the board appealed to the Circuit Court of Decatur County which overruled the court below, dismissing the suit for want of a sufficient cause for action. It did so on the grounds that: (1) the claim had not been satisfactorily presented to the commissioners for allowance and rejected, and (2), the complaint did not state the facts sufficiently.

On appeal the Supreme Court affirmed the judgment of the Circuit Court, rejecting the first ground of dismissal, but accepting the second. It held that if the justice court were held to too technical strictness in pleading, the effectiveness of that court would be greatly impaired. The complaint in this case, though deficient, was not so obscure as to prevent the defendant from understanding it. As regards the second objection, the court held that the complaint did not contain sufficient facts to constitute a cause of action. It showed that the services were rendered voluntarily; and after the voluntary adjustment of the patient's fracture, the subsequent services were requested by one of the township trustees. Under the statute¹⁶ no claim for medical or surgical services could be allowed except by a contract with the board. In this case the court upheld the legislative requirement that such payment be prohibited unless done under contract.

A similar view was taken in 1860,¹⁷ when Dr. Wheeldon presented his claim to the Commissioners of Decatur County.

¹⁵ *Mullen v. The Board of Commissioners of Decatur County*, 9 Indiana 502 (1857).

¹⁶ [Sec. 8, 1 R.S., p. 101].

¹⁷ *The Board of Commissioners of Decatur County v. Wheeldon*, 15 Indiana 147 (1860). See also, *The Board of Commissioners of Warren Co. v. Saunders*, 16 Indiana 405 (1861). See below, p. 216.

Between December 9, 1854, and March 15, 1855, Dr. Wheeldon, who was employed not by the board of county commissioners, but by the township authorities of Washington Township, rendered medical services for paupers in a temporary capacity. Dr. Wheeldon's contract was of record. The board was authorized¹⁸ to make such a contract, and, in fact, payments for such services, if no contract existed, were prohibited. According to the statute, too,¹⁹ overseers of the poor could grant temporary relief to paupers at county expense. Dr. Wheeldon based his claim on these provisions of the law. He sued in a justice's court and secured judgment, which was affirmed by the Court of Common Pleas, but reversed on appeal to the Supreme Court.

The question whether the township or the county had authority to authorize relief or whether the township could disregard the county arrangements for relief was involved. The court accepted the fact that a township was under a duty to see that temporary relief was administered, but it did not agree that a township relief arrangement could contravene a county contract for relief. In this case the township trustees did not have the legal right to employ medical aid for paupers.

In 1861 another situation arose and the court took a more liberal view. A non-resident pauper became ill with smallpox in Jefferson County. He had no friends, money, or shelter, and, accordingly, was taken by a citizen to the township overseer of the poor, who provided food and shelter and employed a physician to give medical care. Later, when the physician presented his claim before the board of county commissioners for reimbursement for the medical services rendered, the claim was disallowed²⁰ because the board at the time had employed two other physicians, whose duty it was to attend all cases of sickness in the county jail and to attend all the sick persons of the township generally.

By the act of 1852²¹ it had been made the duty of the board "to contract with one or more skilful physicians, having knowledge of

¹⁸ [Section 8, 1 R.S., p. 101.]

¹⁹ [1 R.S. Section 24.]

²⁰ *Commissioners of Jefferson County v. Rogers*, 17 Indiana 341 (1861). See below, p. 218.

²¹ ["An Act for the Relief of the Poor," February 8, 1852, *Revised Statutes* (1852) Vol. I, chap. cxxv, sec. 24, p. 405.]

surgery, to attend upon all prisoners confined in jail and paupers in the county asylum." The board might also contract with physicians to attend upon the poor of the county generally and no claim of a physician or surgeon for such services was to be allowed except in pursuance of the terms of such contract.

Although it was evident that medical care was to be given, for which the county would be liable, the question remained as to whether the overseer was obliged to apply to the physicians already employed or if he might lawfully employ another. The court held that, as a rule, the act for the relief of the poor did not contemplate that the county would provide only for those having settlement. Therefore, if upon receiving a complaint that a person, not an inhabitant of their township, was lying sick, in distress, or without friends or money and therefore likely to suffer, it was the duty of the overseer to examine into such a case and grant whatever temporary relief might be required. Claims made under this provision were to be examined by the board of county commissioners, and, if found reasonable, the auditor was to be directed to pay these out of the county treasury. The Supreme Court held that the provision made for medical care was not applicable to strangers, and since the county commissioners were under no obligation in this particular case of illness, the overseer was at liberty to employ another physician.

In connection with the commissioners' refusal to pay for medical services given to two persons who were eligible for temporary care, another question had been raised. The poor persons, not inhabitants, who became a temporary charge upon the public, were so far county paupers as to be entitled to the benefit of the county asylum.²²

But must a resident who becomes temporarily a charge upon the public²³ be taken to the county asylum and furnished relief only by those employed at the institution? Neither of these cases decided whether such a person must be removed to the county asylum, when it can be done. The court urged that in view of questions of economy "this is the proper construction of the whole statute upon the subject of the poor." On the other hand, the court was of the opin-

²² *Reiniche v. The Board of Commissioners of Allen County*, 20 Indiana 242 (1863). See below, p. 219.

²³ *The Board of Commissioners of Bartholomew County v. Wright*, 22 Indiana 87 (1864). See below, p. 204.

ion that it was not the intention of the framers of the statutes to require persons to be removed to the asylum if they needed only temporary care. If this practice were followed it would be difficult for the superintendent to estimate the amount for which he would be willing to care for the poor of the county in the asylum. According to the provisions then in force, a superintendent contracted for the care of the poor on the basis of the number of persons whose names were entered in the poor books, which had to be kept.

In the case just cited, the paupers had smallpox, and medical care was requested for this reason. To have required their removal to county asylums, in order to receive medical aid, would have been quite the contrary practice, if viewed from a health standpoint. The asylums which received all classes of persons were not equipped to meet even the minor health problems adequately, and to have removed smallpox patients there would have endangered the health of the group as well as the individual patient.

In answer to claims that were presented, but had not been authorized by the proper officials, the court held that the benefactions of the state were to be dispensed in pursuance of carefully devised plans. Likewise they were to be executed by officers who were designated by the law and not according to the individual notions of any citizen as to what humanity may require. The township trustees were primarily responsible for determining who were the poor persons entitled to relief.

Of course, if there was no physician or if he refused to act, the situation was changed.

The county commissioners were prohibited from allowing claims for services except in pursuance of authorized contracts. The overseers of the poor had power to employ a physician only in the event that the board of commissioners failed to make suitable provision for attendance upon the poor by contract.²⁴ But if the physician employed was not accessible or refused to act, and an emergency existed, the county would be bound by the judgment of the overseer of the poor, who might in such a case employ a physician. This, of course, assumed that there was no fraud in such a procedure.

²⁴ *Board of Commissioners of Bartholomew County v. Boynton and Another*, 30 Indiana 359 (1868). See below, p. 229.

In 1877 a similar question arose when the Franklin County commissioners refused to pay for medical services given to poor persons at the request of the township trustee.²⁵ The poor persons assisted were, at the time, a temporary charge upon the county and bona fide residents of the township. There was no other physician outside the poor asylum and jail whose duty it was to attend upon the poor, as the physician who had been employed by the board had broken his contract with them and refused to perform his duty. Since the township trustee was by law the overseer of the poor of his township,²⁶ and was required by law to see that all poor persons in his township were properly relieved and taken care of,²⁷ the law contemplated that he would employ such services as were needed. "The spirit and intention of the legislation of this State, on this subject, seem to require that the paupers of each county shall, in any event, receive necessary medical or surgical attention at the expense of the county." Since the physician employed had abandoned his contract and moved away from the county, the township was not thus otherwise provided for. Thus, it was made the duty of the trustee to employ medical aid, the expense of which would be a proper charge upon the county.

In one case²⁸ a doctor put in a claim for services rendered a poor person, without a request from or the consent of the township trustees. The patient became seriously ill and was in urgent need of medicine and medical treatment, which she had no means to procure.

Although the commissioners had employed a competent physician, it was averred that he refused to give the patient the necessary medicine and attention. The plaintiff notified the township trustee of this situation. The trustee, knowing the necessitous condition of the poor person, refused to extend any aid, on the ground that he had no right to employ anyone other than the physician employed by the county commissioners. Out of sympathy and proper regard for the poor person, the plaintiff gave medical aid for about three months.

The question arose as to whether or not the county became liable for the services of the doctor, rendered under these circumstances.

²⁵ *Conner v. Franklin County Commissioners*, 57 Indiana 15 (1877). See below, p. 239.

²⁶ [*Revised Statutes* (1876), Vol. I, p. 676, sec. 1.]

²⁷ [*Ibid.*, p. 677, sec. 6.]

²⁸ *Commissioners of Morgan County v. Seaton*, 122 Indiana 521 (1889). See below, p. 254.

The poor person in this case had not had his name entered in the poor book, and the township overseer did refuse to employ the doctor to administer relief. Even though the township overseer made a mistake in refusing to employ a physician, the court held that the doctor was still without any right of action against the county, which was maintainable only upon the ground of an express or implied contract of employment, by one having competent authority to that end. It cannot be that over and above all the provisions which point out the method for ascertaining and relieving the poor and supplying them with medical aid, and surgical aid, counties still remain liable to anyone who can show that the overseer made a mistake in refusing to employ him and who proceeded notwithstanding the refusal, from motives of humanity, to relieve a poor person in distress.

It is interesting to note that in the decision of the court it was not intended that courts and juries should determine who were poor persons entitled to relief, and whether or not the officers, to whom the care, oversight, and relief of the unfortunate are committed, have decided wisely in each or any particular case. "To affirm that it was, is to declare that the statutory system for relief and the care of the poor is no system at all. The Legislature, upon whom the duty of making provision for the poor and unfortunate is imposed, has adopted means for the discharge of that duty through agencies specially designated for that purpose. Beyond the enforcement of obligations arising and rights accruing through the agencies appointed, the courts have no supervisory control over the subject."

In cases of need of medical care, particularly, there are obviously situations which must be treated as emergencies and, in doing so, certain problems are encountered. Such was presented in a case that was brought before the Supreme Court in 1913.²⁹

A boy fourteen years old fell off of a freight train which he had been riding without right and suffered a crushed leg and foot. A few minutes after the accident, the physicians, who were co-partners in the practice of medicine and surgery, were called to attend the boy. Finding him in need of immediate attention, and knowing that any delay in treatment would probably result in death, they gave surgi-

²⁹ *Newcomer et al. v. Jefferson Township, Tipton County*, 181 Indiana 1 (1913). See below, p. 299.

cal and medical care. After the accident the boy was removed to the home of a citizen in Jefferson Township, as the boy's father, who was a resident of that township, had no home to which to remove him nor any means to provide for his care.

Later when the doctors requested from the township pay for services rendered, for which they believed the township would be responsible, such payment was refused. The commissioners of Tipton County thought that, regardless of necessitous conditions, the townships were not liable for medical or surgical aid given outside of public institutions unless so directed by the overseer of the poor. "He is the sole and conclusive judge of the necessity, and as to whom he will or will not employ to render aid, and as to whether aid shall be rendered."

As a general rule, claims against the township or county could only be founded upon a contract with the proper officer under authority of a statute. The revised laws of 1901 repealed all former laws on the subject and are more consistent with the general attitude toward aid given to those in need, and especially in times of emergency. That act provided for prompt medical and surgical attendance for all the poor in the township outside the poor asylums. While it was primarily intended that such cases were to be authorized by the trustee, it was the opinion of the Supreme Court that if in an emergency he cannot be reached or refuses to act, the law is just as mandatory that relief shall be given at the expense of the township as it is that the overseer shall provide it. The law's mandate in such an emergency raises an implied liability to one who renders such necessary and prompt service for a reasonable amount. The service is not voluntary but an obligation imposed by law.³⁰

FREE LEGAL SERVICES

Indiana legislators very early provided for free legal counsel so that the poor as well as the rich would be assured of having impartial justice administered.³¹ The laws of the state must not conflict with nor be contradictory to the constitution, and where such differences exist, the inferior law must yield to the superior. Much of the litiga-

³⁰ *The Board et al. v. Cole*, 9 Indiana Appellate Reports 474 (1893).

³¹ "An Act to help and speed poor persons in their suits," Approved February 24, 1813, *Laws of Indiana Territory* (1813), chap. iv, p. 10.

tion in relation to the poor law of Indiana concerned the practice of providing free counsel for the defense of the poor, which was started in 1813. The right of the state or of the court to demand professional services without compensation was a recurring question that was raised when an attorney refused to defend an accused person who had been granted his defense *in forma pauperis*. The court held that the statute requiring the services of an attorney at law, without fee, was in conflict with the constitution and therefore void.³² The attorney who denied the right of the state or of the court to demand his professional services without compensation had been adjudged by the lower court as guilty of contempt. This judgment, however, was reversed by the Supreme Court, since the constitution provided that "no man's particular services shall be demanded without just compensation."³³

This was further clarified in a later case in which the clerk of the Circuit Court refused to deliver a transcript of the record until the fees were paid for making it. The defendant had been assigned free counsel and could not pay for the cost of the transcript. Although it had been decided that no man's particular services could be demanded without compensation, this case was distinguished from the earlier in so far as it relates to requiring services without compensation. An attorney was not known as an officer of the state, while those officers entitled to fees or salaries fixed by law take their offices *cum onere* and had no legal right to complain. Their services are official and not particular within the meaning of the constitution.³⁴ The court held the opinion that the law provided compensation by allowing the clerk of court an annual compensation for all extra services for which no fee is fixed by law. A liberal construction was given in favor of the poor persons as shown in the conclusion of the decision. "We can scarcely conceive of a system of laws so inhuman and cruel that would consign the destitute and friendless to conviction and infamy, without according full and ample means for investigation. Such a system would, in many cases, make poverty equivalent to crime, for without the means of procuring writs, witnesses and records, the in-

³² *Elythe v. The State*, 4 Indiana 525 (1853). See below, p. 204.

³³ The Constitution of Indiana, 1852, Art. I, sec. 21.

³⁴ *Faulkenburgh v. Jones*, 5 Indiana 296 (1854). See below, p. 204.

nocent might, and frequently would be convicted and that part of our constitution, which provides that 'justice shall be administered freely and without purchase, completely and without denial,' would be an empty boast and worse than mockery to the poor."

The right of the court to appoint an attorney to defend a pauper criminal and its power to make the county board liable for his allowance was questioned by a county auditor in 1854.³⁵ He refused to pay the attorney the twenty-five dollars which the Circuit Court Judge had ordered to be certified. It was the decision of the Supreme Court that the county was liable for the value of the services of the attorney, but that the court could not fix the measure of compensation.

While it was an accepted fact that the court had the discretionary power of deciding what articles and services were necessary, and of allowing such sums to the persons rendering these services, the question remained as to whether these provisions would include an allowance for the defense of a prisoner. It was, however, agreed that no civilized community would permit one of its citizens to be put in jeopardy of life or liberty, or should permit him to be debarred of counsel because he was too poor to employ such aid. "The defence of the poor, in such cases is a duty resting somewhere, which will be at once conceded as essential to the accused, to the Court, and to the public." In attempting to determine the place of responsibility for the defense of a person charged with crime the Court said: "It cannot be admitted for a moment that the law regards the physical wants of the citizen of more consequence than his life or his liberty. Whenever, therefore, the law makes provision for the one, at the public expense, the other, being within the reason of the law, is also embraced. It seems eminently proper and just, that the treasury of the county, which bears the expense of his support, imprisonment and trial, should also be chargeable with his defence."

The revised statutes of 1852, which did not take effect until May 1, 1853, not only authorized the courts to appoint counsel but also conferred authority to fix the amount of compensation. The number of assistants so appointed by the order of the court were not to exceed the actual necessity of the case.

³⁵ *Webb, Auditor etc. v. Baird*, 6 Indiana 13 (1854). See below, p. 207.

In 1871 the county commissioners of Fountain County had retained an attorney to defend at a fixed compensation all poor persons prosecuted in the courts of the county.³⁶ An attorney appointed by order of the Circuit Court of Fountain County to assist in the defense of a person charged with the crime of murder was not allowed his full claim by the commissioners. Inasmuch as the commissioners already had an attorney engaged for the county, the court and the attorney appointed by it should have taken notice of that fact. It is possible that the attorney who had been employed for a year by the commissioners needed the assistance of additional counsel or might have been absent from attendance at court, in which case the discussion implies that it would have been proper for the judge to appoint a second attorney.

Although there was no statutory authority for the judge to assign counsel, the judge of the Circuit Court was, in that capacity, considered an agent of the county and could bind the county for services given at his request.

The same principle which made it the duty of the overseers to determine who should receive temporary relief, when in distress, and gave them power to bind the county for such care, was found in the duty placed on the courts.³⁷ They must decide who shall defend as a poor person and bind the county for the compensation of the attorney, in pursuance of an appointment duly made.

The privileges which were extended to poor persons requesting defense were not to be construed beyond their true purpose and scope as reflected in a later decision of the court: "It is manifestly the duty of the courts to see to it that justice is not allowed to fail, and that no one is denied the opportunity of asserting his rights under the law because he is an object of charity, but it is equally their duty not to encourage unnecessary and fruitless litigation, or to allow the public treasury to be opened merely to harass persons against whom speculative claims, in which no merit is apparent, may be asserted."³⁸

The court's attitude toward its responsibilities in a case where able

³⁶ *The Board of Commissioners of Fountain County v. Wood*, 35 Indiana 70 (1871). See below, p. 233.

³⁷ *The Board of Commissioners of Montgomery County v. Courtney*, 105 Indiana 311 (1885). See below, p. 267.

³⁸ *Hoey v. McCarthy*, 124 Indiana 464 (1890).

parents refuse to provide counsel to defend their son is an interesting one.³⁹

The Supreme Court held that the inferior court erred in their refusal to employ counsel for a poor person because his parents possessed means. "If parents refused to contribute of their means to aid in defense of their son, the result to him was the same as if they had been penniless. If the parental affection was not sufficiently strong to induce them to come to his aid, there was no process by which they could be coerced, and his condition was as hopeless as if he had been an orphan. The power as well as the duty of the court to assign to poor persons charged with serious crimes, counsel for their defense, upon a proper showing, is no longer open to dispute in this state." Any poor person whose rights were to be enforced in the state of Indiana was entitled to the benefit of the provision made for the defense of the poor. A non-resident, permitted to prosecute an action as a poor person, could not be required to give a cost bond.⁴⁰

APPRENTICESHIP

Some of the earliest poor law practices in relation to the apprenticing of children, the contracting for the care of the poor, and placement in the poor asylums are more clearly brought out in a few of the earlier judicial decisions.

Vickey Demar, a colored woman, claimed the custody of her ten-and-a-half-year-old son, Charles, who she charged was being illegally detained by John Simonson.⁴¹ According to Mr. Simonson, Charles was his apprentice, bound to him by his own consent and living with him then by his own consent. The indenture had been made by the overseer of the poor of Charlestown Township, where Charles was living at the time of his indenture, and had been living for some time. After the Circuit Court heard the testimony, it remanded the boy to the custody of Simonson. An appeal was taken because of the question whether or not the indenture of apprenticeship, executed by the overseer of the poor, was valid. The two grounds upon which the overseer then claimed a right to act were the death of the parents of

³⁹ *Hendryx v. The State*, 130 Indiana 265 (1891).

⁴⁰ *The Fuller & Fuller Company v. Mehl et al.*, 134 Indiana 60 (1892).

⁴¹ *Demar v. Simonson*, 4 Indiana 131 (1838).

poor children and their inability to maintain them. It was claimed that the authority of the overseer might be exercised when either of these conditions existed.

The indenture showed that Charles had been living with a colored man to whom he had not been apprenticed and because that man was leaving the county he asked the overseer to make other arrangements, as he saw fit. By this authority alone, it seems, the overseer bound Charles to Simonson, and the indenture was therefore considered to be illegal and void.

Three years later it was decided that the children of living parents could not be interfered with by the overseer of the poor or the Probate Court unless their parents were found to be unable to maintain them.⁴²

Prather, the overseer of the poor in Liberty Township, Hendricks County, filed a complaint before the Probate Court of that county, charging that Stanton disregarded his duty as a parent, "wickedly neglecting for an unreasonable period of time, to provide for his infant children who were actually in a suffering condition for the want of the necessities of life."

Prather, in his official capacity as overseer, had demanded of Stanton his minor children, so that he could bind them out as apprentices and thus they would be provided for and trained to habits of industry. Stanton pleaded not guilty, and the court, having the testimony, ordered Prather to take all the children and bind them out according to the poor laws. According to the poor-law provision governing the apprenticing of children, any parents objecting to the indenture of their children were to appear before the Probate Court to show cause why their minor children should not be bound out. If sufficient cause to the contrary was shown, the court might, in spite of the parents' objection, order the overseer to bind out the children. In this case, however, the proceedings were not authorized by that law. When parents objected to having their children apprenticed or were unable to maintain them, the Probate Court then had a right to act. From a report of the overseer it appears that he did bind out three of the minor children.

While Stanton had apparently been neglecting his children, there

⁴² *Stanton v. The State, on the relation of Prather, Overseer, etc.*, 6 Indiana 82 (1841).

was no allegation that he was unable to support them and so did not subject the disposal of his children to the jurisdiction of the overseer of the poor nor to that of the Probate Court. Another question that arose at an early date was the nature of the obligation assumed by one who contracted for the care of the poor.

It had been early held that contracting for the care of the poor imposed upon the person agreeing to maintain them a personal trust which he could not assign to another.⁴³ In 1851, Rice, the lowest bidder, chosen by the overseer of Floyd County, had agreed to give Burger half the paupers to maintain at a certain price. Both of these men had kept paupers before and were to retain the ones they had, but as new ones came to the county they were to accept the new ones alternately. If there was a particularly turbulent one they were to keep him about a month and then change. Burger was to receive them for one dollar a week for which he would provide food, clothing, and lodging, which was the provision which Rice had made in his contract with the overseer. Burger received only a few paupers after this arrangement was made and complained because no more had been sent to him. Rice explained that the paupers reported they had not been treated well about "eatables," and that the overseers of Lafayette Township had been down and ordered them taken away, but Burger sued.

It was held that such a procedure was illegal. If the overseers, in awarding paupers on bids received, were to be influenced by the moral character of the bidder as well as the price offered and the responsibility connected with it, then it should be regarded as a personal trust which could not be transferred by assignment without the consent of the overseer of the poor.

From these decisions it may be inferred that most of the underlying philosophy in the decisions rendered by the Indiana Supreme Court has been in accord with present-day thinking in regard to public welfare. The court made it clear that a county system and not a township system as a mode of relief to paupers, was what the poor law intended. In providing medical care, the division of responsibility between the county commissioners and township trustees was a source of much litigation. The court clearly indicated that where

⁴³ *Burger v. Rice*, 3 Indiana 125 (1851).

medical care was needed it was to be provided. If no physician had been appointed for the county poor, or where one failed to attend, the township trustee might employ one for such purposes and the county would be liable for his services.

In regard to the defense of the poor, courts had the right to appoint one or more attorneys for pauper criminals and make allowances to them, which would be a valid claim against the county board. The court's interpretation concerning family responsibility was a liberal one, indicating that although a moral obligation is recognized universally it may not actually exist in every case, and where this is true, little value will result from any attempt to enforce it.

While it is not possible to determine the effect of the court's decisions on poor law practices in Indiana, they express a liberal construction of the laws relating to the sick, the accused, the unsettled poor, and to the care of children, but point to the need for more effective legislative provisions in practically every phase of poor law administration. There can be no doubt that the Supreme Court of Indiana encouraged consideration on the basis of individual needs such as the law intended.

CHAPTER VIII

THE ATTORNEY-GENERAL AND THE POOR LAW

A study including only the statutory provisions for the care of the poor represents but a partial history of poor law development. In order to understand the development of administrative practice in this field, the decisions of the courts and the opinions of the attorney-general must be likewise examined. It should be remembered that local officers throughout the state were responsible for administering the poor law, and there is little doubt that a wide diversity existed in their practice and in the performance of this public duty. The laws were construed differently in different townships and counties. From time to time, however, an interpretation applying to all local units was embodied in an opinion of the attorney-general, or in a decision of the highest court.

Although the office of attorney-general was created in 1855,¹ the opinions of this official began to be published only in 1873.² Aside from taking charge of litigation in certain courts, the attorney-general was requested to answer questions raised by state officers as to the construction of the statutes in relation to their duties. The published collections of his opinions do not include those which probably were given to county, township, and city officers. This is in accordance with the provision requiring him to keep only a record of the opinions given to the governor, General Assembly, and the state officers. After the creation of the Board of State Charities in 1889,³ the secretary of that board frequently asked for opinions on the various laws which seemed to give rise to conflicting practices and general uncertainty as to their meaning.

Considerable confusion was evident after the county reform bill was passed in 1899. In so far as it related to the poor law, it authorized the county commissioners to meet the costs out of the county

¹ *Laws of Indiana* (1855), chap. iii, sec. 6, p. 16.

² *Ibid.* (1873), chap. vii, sec. 3, p. 19.

³ *Ibid.* (1889), chap. xxxvi, sec. 1, p. 51.

treasury for the relief of no pauper or person liable to become such, if the person relieved were in a county institution.⁴

Dr. Amos Butler, then secretary of the Board of State Charities, asked the attorney-general to explain this law as it affected provisions in earlier acts dealing with the care of dependent and neglected children.⁵ He asked whether or not it prohibited the county commissioners from making provision for these children in need of care, and in what way relief could be given them.

The attorney-general, in reply, first suggested that such laws must be construed together, and liberally so, in favor of the remedies sought to be effected. The law passed in 1897 regarding orphan children in a county which did not own and manage its own asylum authorized county commissioners to contract with orphan asylums or other institutions to care for dependent children at the rate of twenty-five cents a day. Where such contracts were made the asylums became quasi-county institutions, and in the opinion of the attorney-general came under the terms of the county reform act. That this law intended the county commissioners to assume the financial responsibility for the county's needy children was thought to be shown in the provision authorizing the commissioners to prepare an estimate of county expenditures, including those institutions supported entirely or in part out of the county treasury, as well as the support of inmates in the state institutions. The county council was to fix the levy necessary to meet such expenditures.

It was further suggested that the evident purpose of the county reform bill, as related to poor relief, was to prohibit the discretionary allowances by the county board to the poor and to establish in each township only one source for the disbursement of public aid. The whole cost of outdoor relief was to be borne by the township and administered by the overseers of the poor. They were to have poor relief funds advanced to them from the county treasury, and no warrants were to be drawn from the treasury in the name of the pauper.

After January 1, 1900, the county council was to make appropriations for county expenditures during the next year and no funds were to be drawn for which an appropriation had not previously

⁴ *Ibid.* (1899), sec. 33, p. 354.

⁵ *Biennial Report of the Attorney-General, 1899-1900*, p. 70. See below, p. 306.

been made.⁶ Outdoor relief was a township responsibility but was to be advanced by the county a year before it was collected by the townships.

Since the county reform act prohibited the county commissioners from employing a physician for persons who were not in a public institution, the attorney-general was asked whose duty it was to employ a physician to care for the outdoor poor.⁷ Should the money used for this service be included in the amount for which levy was made against the township to reimburse the county for the medical attendance of the poor? The attorney-general replied that although the county board could not contract with physicians for the care of the outdoor poor, this did not prohibit the township trustees from making such an arrangement.

A similar question relating to the reimbursement of the county was asked in connection with the compulsory education act.⁸ Children whose parents, guardians, or custodians were too poor to furnish them with the necessary books and clothing, were to be given assistance by the school trustees or commissioners of the city. It will be recalled that in February, 1899, an act was passed⁹ limiting the amount of aid given to any poor person or family, other than for burial, to fifteen dollars in any quarter. The assistance to destitute school children was to be allowed and paid by the county commissioners, and the attorney-general expressed the opinion that while such aid should be repaid by the township to the county in accordance with the county reform law,¹⁰ it should not be included within the fifteen-dollar limit.

In 1906 the superintendent of public instruction had occasion to ask an opinion relating to the responsibility in providing an education for non-resident dependent children who had not been legally transferred from one district to another.¹¹ A small charitable home had been receiving dependent children from different sections of the

⁶ *Laws of Indiana* (1899), sec. 49, p. 355.

⁷ *Biennial Report of the Attorney-General, 1899-1900*, p. 76.

⁸ *Ibid.*, p. 80. See below, p. 309.

⁹ *Acts of 1899*, chap. xc, p. 121; above, p. 36.

¹⁰ *Biennial Report of the Attorney-General, 1899-1900*, p. 76. See below, p. 311.

¹¹ *Opinions of the Attorney-General, 1904-6*, p. 382. See below, p. 316.

state and assumed the responsibility for their care and maintenance. These children were collected by a representative of the home and were not sent there by any truant officer, juvenile court trustee, or other legally authorized officer. Some of the children were orphans or half-orphans, and the question of their settlement had not been determined or taken into consideration by those in charge of the home. However, these officers insisted that the township trustee must provide the resources necessary for the education of these dependent children. Two definite questions were then raised: (1) Did such an institution have the right to compel the township trustee, where the home was located, to educate these children; and (2) Could the township trustees compel the trustee of the township from which the child came to pay the transfer fee for tuition?

This question was finally answered in 1903 by an act regulating the transfer of dependent children in orphans' homes. This act provided that the children should be educated by the township trustee where the home was located.¹² The school corporation where the children had a settlement was to pay to the township where the institution was located, as tuition, a sum equal to the annual per capita cost of education in the corporation where the children were actually school residents. The attorney-general held that it was not intended for private custodial institutions to collect children from all over the state and expect the township in which the home was located to provide schooling for them unless a legal transfer had been made.

In 1931 the state examiner requested an official opinion concerning the proper fund from which money, used in carrying out the compulsory education act, was to be drawn.¹³ Was it to come from the county board out of the township poor fund without appropriation by the township advisory board in townships where appropriations had to be made for the expenditure of poor relief funds? The attorney-general drew a distinction between poor relief and aid given for compulsory education by quoting the definition of relief as "aid in form of money or necessities for indigent persons, supply of food and drink; sustenance." As the temporary aid furnished under the com-

¹² *Laws of Indiana* (1903), sec. 1, p. 15.

¹³ *Opinions of the Attorney-General*, 1931-32, p. 289. See below, p. 330.

pulsory education act provided only for books, school supplies, and clothing in order that children might attend school, its purpose was not the same as the furnishing of relief in the usual sense of the term. Consequently, this fund was not considered a part of the poor relief fund and would, therefore, not have to be especially appropriated before it could be paid as was true in the case of poor relief.

The uncertainty regarding the division of responsibility between the local board of health and the township trustee as overseer of the poor was revealed in numerous situations which were presented to the attorney-general for his opinion. Whose duty was it in cases where the families were not paupers but in which the wage-earner was prevented by quarantine from earning a livelihood for his family to furnish household supplies, medicine, and medical assistance?¹⁴ The overseer of the poor was to be responsible for the care of all poor persons in his township as long as they remained a charge. In cases of necessity, medical and surgical care were to be given to poor persons not in public institutions. The quarantine act of 1903 provided that expenses incident to disease prevention should be paid by the cities and towns in which the work became necessary. If local authorities refused or neglected to enforce the statutes and the rules of the state board of health for the restriction of dangerous and communicable diseases, the state board had authority to enforce the rules and charge the expense of such enforcement to the counties, townships, or cities where the enforcement became necessary.

The attorney-general stated that a person may properly be considered "poor" when he is disabled by sudden calamity from supporting his family, although he is not a pauper in the usual sense of the term.¹⁵ The support of the indigent is deemed a matter of local, rather than general, concern while the subject of disease prevention is one in which the whole state is interested. The attorney-general therefore concluded that it was proper for local officers to furnish supplies intended to relieve the ordinary necessities of the family, while the state should provide the extraordinary expenses necessitated by a contagious disease. The distinction made in implying that the prevention of disease is one in which the whole state is interested while poor relief is a matter of local concern is especially inter-

¹⁴ *Ibid.*, 1904-6, p. 214. See below, p. 317.

¹⁵ *Ibid.*, p. 216.

esting now during a widespread economic crisis. In the matter of disease prevention, the state assumed its responsibility and right to enforce laws in relation to it. Perhaps as the public recognizes that all phases of public welfare are of general concern, and cannot, in the present state of society, be dealt with adequately by local units, the problems of the prevention of poverty will also receive more scientific treatment.

The attorney-general assumed that the state did not intend to buy groceries, household supplies, clothing, and pay rent for a family made dependent by isolation, but was required to provide expenses made necessary by establishing quarantine.¹⁶ The expenses of a home are precisely the same where the man is prevented from earning a livelihood because of a quarantine as they would be if he were unable to work because of any other reasons. Consequently, it was decided that such charges cannot be regarded "expenses incident to disease prevention." In the words of the attorney-general, "they accompany isolation but are not occasioned by or incident to it." The final opinion was that for ordinary household expenses the family should be assisted by the township trustee.

After the General Assembly passed an act, in 1917, providing for the establishment and maintenance of public county hospitals,¹⁷ poor persons were frequently taken to the hospitals, where they were admitted as free patients on the authorization of the matron or hospital superintendent. The trustees of the township in which the patient resided were then notified and were required to repay the treasurer of the hospital board for the care of the patient.

This procedure was questioned by township trustees, as may be seen in the case of the overseer of the poor in Posey Township.¹⁸ He presented his problem to the state examiner, who asked the attorney-general to render an opinion on the subject. On one of the state roads that led through the township, accidents occurred almost daily and the injured were rushed to the Brazil Hospital, which was operated by the county. The hospital superintendent and matron contracted bills against the township poor funds without consulting

¹⁶ *Ibid.*, 1916-20, p. 528.

¹⁷ *Laws of Indiana* (1917), sec. 18, p. 527.

¹⁸ *Opinions of the Attorney-General*, 1929-30, p. 434. See below, p. 434.

the trustee or obtaining his approval. Was such action within their power, and could they determine who were fit subjects for charitable aid? These questions were asked by the Posey Township overseer of the poor. The attorney-general ruled that in accordance with the act establishing county hospitals, the general procedure used had been correct. It in no way repealed the poor relief law of 1926, in which there was a provision authorizing township trustees to provide medical and surgical attendance promptly for all the poor of the township not in public institutions.¹⁹ Likewise, they were to aid any sick or aged persons, unable to travel, who were non-residents of the township and in need of medical care. These two contingencies upon which an overseer of the poor would be authorized to furnish aid, namely, when residence could not be established and when the poor person was sick and unable to be moved, were supplementary to the provision for medical care in the county hospitals.

When persons became permanent charges on the township they were to be removed to the county asylums.²⁰ The question of liability for the cost of transportation was raised by the state examiner, who asked whether or not the charges for removing persons to the asylums were to be paid from the poor fund.²¹ The attorney-general, in suggesting that overseers were responsible for removing poor persons to the county asylums, assumed that they would pay the expenses for such transportation from the poor relief fund, which was the only one available to them.

In 1916 the secretary of the Board of State Charities asked whether or not it was legal for the board of county commissioners to employ a superintendent of a poor asylum on a salary, with the understanding that he was to supply and pay the help or furnish teams, other stock, vehicles, and farm implements.²²

According to the statute of 1914,²³ the county commissioners were authorized to appoint a superintendent of county poor asylums and fix his salary. With his advice and assistance, all attendants, ma-

¹⁹ *Burns' Annotated Indiana Statutes*, chap. 91, sec. 12260.

²⁰ *Burns' Revised Statutes* (1914), sec. 9777.

²¹ *Opinions of the Attorney General*, 1916-20, p. 393. See below, p. 324.

²² *Ibid.*, p. 872.

²³ *Burns' Revised Statutes* (1914), sec. 9781.

trons, farmers, seamstresses, and other employees were to be secured and a definite salary arranged for. The county council was to make allowances for the tools necessary in the maintenance of the farm, and officers were prohibited from being interested in all contracts for supplying help, teams, stock, and vehicles. In view of such provisions it was not legal to employ a superintendent with the expectation that he would supply and pay for help and equipment. The contract system had been used as a method for management and maintenance of county asylums, but had been found unsatisfactory from every standpoint, except in the case of a few superintendents to whom it seemed an easy means for making personal profit.²⁴ The attorney-general did not review any of the problems involved in such a practice, but stamped it as an illegal one.

Although the question had been decided by the Supreme Court three times, an opinion was asked in 1900 regarding the allowances to be made to township trustees for their services as overseers of the poor. Recalling again the Supreme Court decision, the attorney-general explained that the trustee was entitled to the same pay for services rendered as an overseer of the poor that he receives for other services as trustee.²⁵ Not more than two dollars a day was to be paid to them from any source, and the overseer could not get his pay in addition to that for his services as trustee.

Twenty years later, when poor relief investigations became more numerous, township trustees were employing special investigators to assist them in determining persons' eligibility for relief. The state examiner raised the question about the payment for such service and the fund from which it should be taken.²⁶ In the provisions specifying the duties of the township trustee as overseer, no authorization was given for him to employ others to assist him in the performance of his duties. The Salary Act of 1917, classifying townships and providing compensation for trustees, authorized allowances to be made for clerical assistance to the trustee in certain townships.²⁷ This was an attempt to make available to the trustee funds to employ clerical

²⁴ Alexander Johnson, "The State Aged 100," *Survey*, XXXVI (April, 1916), 100.

²⁵ *Biennial Report of the Attorney-General, 1899-1900*, p. 74. See below, p. 324.

²⁶ *Burns' Revised Statutes*, sec. 9741.

²⁷ *Laws of Indiana* (1917), sec. 3, p. 602 (title).

help in the conduct of his office. If, under the provision authorizing township officers to appoint deputies and assistants, it was intended that overseers should do so, no allowance for them was made except for clerical assistance. The overseer was responsible for investigating all claims for poor relief, and must either do it himself or have his assistants do it and pay them out of the funds allowed in the Salary Act referred to above. The attorney-general further concluded that in the absence of any statute authorizing the trustee to pay assistants from the poor relief funds, such a procedure would be illegal.

In 1931 attention was turned somewhat from the investigators to the investigation.²⁸ The director of the State Relief Commission requested an opinion as to the nature of information which a township trustee, as overseer of the poor, should secure to enable him to act upon applications for relief, particularly where the information came from other organizations and relief societies.²⁹ The reply was that the officer should see that all poor persons were properly relieved and taken care of in the manner required by law.³⁰ It would be necessary to know "(1) the legal residence, (2) the physical condition of sickness or health, (3) the present and previous occupation, (4) the ability and capacity for labor, (5) the ages, (6) the name and age and the ability and capacity for labor of each member of the family, and (7) if the applicant is found to be in distress, the cause of his condition if that can be ascertained." The overseer was also supposed to visit the relatives of an applicant, in order to determine whether or not they might be able to be of any assistance to the person asking for relief. Co-operation with other charitable agencies was authorized, "to the end that the unnecessary duplication of relief [might] be avoided and the creation of new families of paupers through misguided and useless alms [might] cease." The attorney-general was of the opinion that where it was impossible for the overseer of the poor to make personal investigations, he was authorized to rely upon the information received from charitable organizations. This was especially true where the overseer was not permitted to employ assistant investigators.

²⁸ *Opinions of the Attorney-General*, 1931-32, p. 289. See below, p. 330.

²⁹ *Ibid.*, p. 433. See below, p. 333.

³⁰ *Burns' Annotated Indiana Statutes* (1926), chap. xci, sec. 12260.

In 1932, when plans were being made for community funds, some officials were not certain about the source from which funds might be available for the purchasing of seeds.³¹ The attorney-general suggested that in reviewing the poor law he found nothing authorizing the trustee to use public funds for such a purpose. He suggested that if such projects were to be carried on, they would probably have to be financed by voluntary organizations. The use of poor relief funds for seeds would be analogous to using such funds for furnishing implements of cultivation and other things necessary to produce a crop. Such expenditures, according to the attorney-general, were not within the authority given to the township trustees.

It will be seen from the opinions cited that the attorney-general realized the nature of the problems confronting the families who had to ask assistance from the public, and so faced the responsibility both to those asking and to those attempting to administer relief that a liberal interpretation was given to the statutes under which action was taken. While the opinions requested were often of a general nature, they probably represented problems which were met in most of the local units.

³¹ *Opinions of the Attorney-General, 1931-32*, p. 436. See below, p. 336.

CHAPTER IX

EMERGENCY LEGISLATION

In 1933 approximately one-tenth of Indiana's population was receiving aid from the overseers of the poor.¹ The cost since 1929 had doubled each year over the preceding year, and the relief load, unprecedented both in amount and in the number of persons in distress, could not be met by the regular system of poor relief which characterized Indiana's poor law. Local units of government depending primarily upon property taxes for their sources of revenue found this too inadequate to meet the existent human needs caused by widespread unemployment. In Indiana, as in other states, consequently, emergency legislation became necessary.

The first emergency act was passed in 1931,² to expire in April of 1933, and authorized the county commissioners to borrow money needed in excess of the amounts available under the general fund of the county. After such a loan was made the township trustees and the advisory board, at their next annual meeting, were to levy a tax sufficient to reimburse the county treasury for the loan, principal and interest. This is in accordance with the law governing outdoor relief, as it has been practiced since 1897,³ in so far as the funds were

¹ J. A. Brown, "Welfare Institutions and Agencies and the Depressions," *Social Service Review*, VII, No. 3 (September, 1933), 438.

² "An Act authorizing the borrowing of money by boards of commissioners of counties in Indiana to pay claims incurred and filed with such boards by township trustees, for the relief of the poor, which claims are in excess of appropriations and tax levies made therefor, and where such counties have no funds with which to pay said claims, and for the payment of claims incurred and filed by the trustees of townships for the relief of the poor, where appropriations and tax levies for such purposes have been exhausted or are in danger of being exhausted, and requiring townships to levy a tax to repay such counties for any such funds so borrowed for either or both of such purposes, and declaring an emergency," March 6, 1931, *Acts of Indiana* (1931), chap. lxxiii, p. 188.

This was amended in 1932, authorizing bonds issued under the act of 1931 to be refunded under provisions of this act by paying and retiring the bonds under this provision. *Acts of 1932* (Special Session), chap. xlvi, p. 187.

³ "An Act to amend Section 35 of an act entitled, 'An Act for the relief of the poor,' June 9, 1852," March 8, 1897, *Laws of Indiana* (1897), chap. cli, p. 230.

advanced by the county treasury and the next year reimbursed by the township trustees.

The tax-rate limitation, passed by the special session of the legislature in 1932, was amended in 1933 by fixing \$1.50 as the limit in incorporated cities and towns, and \$1.00 outside the city limits. Together with this there was a decline in assessed valuations of property making serious limitations of funds for all purposes. Although provisions were made for issuing bonds for poor relief, such bonds could not be sold because there was no assurance that sufficient tax revenue would be raised to meet the interest and retirement of the bond.⁴

In certain townships the advisory boards were to meet once a month regarding the relief needed for the poor during the next calendar month, and no obligation could be incurred beyond the amount fixed by the advisory boards.⁵ These boards were also made responsible for determining what, if any, persons were to be employed by the township trustee as investigators and assistants in discharging his duties concerning the relief of the poor and to fix the salaries paid to them.⁶

A further act,⁷ which was repealed in 1933⁸ permitted the trustees of townships located in counties having a population of 300,000 or more, of which there is only one, to pay those appointed by him, as investigators of the poor, out of the township poor fund on legal requisitions which were to be approved by the Board of Commissioners.

Principles of the work test were introduced in an amendatory act of 1932, whereby persons in need of township aid, who were able-

⁴ Brown, *op. cit.*, p. 439.

⁵ "An Act concerning township business in certain townships, prescribing duties of the trustees and township advisory boards; providing penalties and declaring an emergency," March 6, 1931, *Acts of Indiana* (1931), chap. lxxiv, p. 190.

⁶ *Ibid.*, sec. 2.

⁷ "An Act to permit the township trustees of certain townships to pay the investigators of the poor out of the township poor fund on legal requisitions, approved by the board of commissioners of the county in which such township is situated," March 7, 1931, *ibid.*, chap. lxxvii, p. 254.

⁸ *Ibid.* (1933), chap. 158, p. 822.

bodied and capable of working, might be required to work before being given relief.⁹

Township advisory boards of townships located in counties having a city of the second or third class, or an entire population of 53,000–58,000, were given further responsibilities through the power delegated them to obtain supplies except fuel, which might be furnished inhabitants of the state who were indigent and unemployed.¹⁰ Commissaries were to be set up and after securing supplies through advertising for bids—just as the county commissioners were required to do for institutional supplies—township trustees could give requisitions; however, the aid was still to be approved by the county commissioners, who were to advance funds for the commissaries.

An attempt to create larger poor relief districts,¹¹ both for the administration of relief and for the levying of taxes, gave belated recognition to the inadequacy of the smaller units in both respects. According to the provision of this act, which was repealed the next year,¹² all portions of all townships located within the corporate limits of any city of the first class were to constitute a district for the purposes of levying the tax for and administering poor relief. The township trustees of the several townships were to constitute a poor relief board and were to adopt rules and regulations for securing uniform administration of the poor law in that district. This poor relief board might establish a central investigating bureau, and the investigators, who were to serve not more than two hundred families, were to be appointed by the trustee of the township in which they were to work.

While the larger unit did not function in accordance with the poor

⁹ "An Act to amend Section 9 of an act entitled 'An Act for the relief of the poor, repealing all laws in conflict therewith, approved March 9, 1901,' August 16, 1932," *Acts of Indiana* (Special Session, 1932), chap. xlvii, p. 188.

¹⁰ "An Act creating and establishing township commissariats in certain townships; providing for the operation, maintenance and management thereof, prescribing their rights, powers and duties and providing a method for advancing money, making loans and levying taxes for the repayment of such loans," Aug. 16, 1932, *ibid.*, chap. l, p. 191.

¹¹ "An Act concerning the establishment of poor relief districts and the administration of poor relief therein and the levying of taxes," August 16, 1932, *ibid.*, chap. li, p. 195.

¹² *Ibid.* (1933), chap. lxxxvii, p. 581.

relief district plan, county units for administrative purposes have developed under the provisions of the Federal Emergency Relief Administration. The responsibilities and duties of the federal program were assumed by the Governor's Commission on Unemployment Relief.¹³

In the beginning this Commission was responsible for securing the funds from the emergency relief division of the Reconstruction Finance Corporation. Local agencies receiving the loans were responsible for the expenditures of such, and the Commission's duties were limited to presenting the information which justified the making of the loan and the amounts to be given.

When the federal administration designated the Governor's Commission on Unemployment Relief as its agent in Indiana, the Commission assumed responsibility for deciding what counties were entitled to federal aid (based on their needs and their lack of ability to pay the cost of adequate relief) and of seeing that the standards of relief administration set up by the Federal Relief Administration are met in those counties. From an advisory and supervisory body it had, in less than a year, grown to an administrative agency of major importance, charged not merely with the prudent and economical expenditure of a million dollars a month, but the greater responsibility of assuring the well-being of nearly 300,000 men, women, and children in the state.¹⁴

In 1932 an amending act was passed in relation to investigators. Previously the township trustees, as overseers of the poor, had made the investigations to determine a person's eligibility for assistance from public funds, but with the rapid increase in the numbers of unemployed persons who found it necessary to apply for assistance, additional investigators had to be employed. They were at first to

¹³ "An Act creating the Governor's Commission on Unemployment Relief, providing for the appointment and prescribing the duties thereof, transferring certain rights, powers and duties thereto, and providing for the making of investigations as to the performance of the duties of the township trustees as overseers of the poor, filing charges, providing for a hearing thereon, by the Governor, and the removal of any trustee from office by the Governor, making appropriation for the purpose of this act and declaring an emergency," March 8, 1933, *ibid.*, chap. cxxxvi, p. 759.

¹⁴ See "Creation and History of Governor's Commission on Unemployment Relief, *Indiana Bulletin of Charities and Corrections*, No. 314 (August, 1934), p. 163.

be paid from the township poor fund by the trustees. No specific salary scale was set up until 1932, when the provision specified that each investigator was to serve not more than two hundred families and to receive not more than four dollars a day.¹⁵ In 1933 it was provided¹⁶ that their qualifications should be prescribed by the State Relief Commission. Overseers of the poor were, of course, not professionally equipped and there was little supervision, except in regard to the amount of money spent.

In Indiana, county attendance officers were required to serve as investigators of the poor under the direction of the overseer of the poor. They were to be assigned families whom they would be visiting under the compulsory attendance law.¹⁷

The overseers were authorized to pay for water services both for those receiving relief and for those not accepting relief but who were unable to pay for this service.¹⁸ If the overseer took care of it in the latter instance, he was to take it from poor relief funds and charge it to that account but to indicate "water furnished in the interest of public health." The interrelation of public health and public welfare services as suggested in this act and the correlation of these services in other instances, points to a wide field of public service which needs a more integrated program.

Although Indiana's early legislation made provision whereby mature persons of sound mind might receive relief in their own homes, no plan was made for old age security. In 1933 the county commissioners were authorized to provide pensions¹⁹ to persons over seventy years who meet certain requirements in regard to residence,

¹⁵ "An Act to amend section of an act entitled 'An Act to permit the township trustees of certain townships to pay the investigators of the poor out of the township poor fund on legal requisitions, approved by the commissioners of the county in which the township is situated, March 7, 1931,' August 17, 1932," *Acts of Indiana* (Special Session, 1932), chap. lviii, p. 207.

¹⁶ Acts, 1933, chap. 158, but see chap. 136 and chap. 221.

¹⁷ "An Act authorizing and requiring county attendance officers to serve as investigators of the poor in the several townships of the county," March 9, 1933, *Acts of Indiana* (1933), chap. ccxi, p. 1013.

¹⁸ "An Act concerning the payment of water service by the overseers of the poor of certain townships," February 24, 1933, *ibid.*, chap. clviii, p. 822.

¹⁹ "An Act to establish an old age pension system in Indiana . . .," February 24, 1933, *ibid.*, chap. xxxvi, p. 164.

character, financial condition, and present need. In reality, this act provides for relief to the aged who are eligible for assistance through poor funds and sets up a separate system for its administration.

The emergency legislation in Indiana temporarily supplants the permanent poor law in which there was no state assistance and in which the work of overseers, who were untrained in social work, had not had adequate supervision.

In 1933 the Indiana Board of State Charities, established in 1889, was changed to the Department of Public Welfare,²⁰ and the director of this department also serves as director of the Governor's Commission on Unemployment Relief. The Commission was specifically directed to investigate the work of the township trustees and see that they provide adequate relief in accordance with the needs of the applicants.

The Commission was also directed to set up the qualifications for persons employed as investigators, and it has emphasized the need for higher qualifications in professional education in social work.

Larger units for administration and taxing purposes, and the need for trained personnel under the supervision of a central authority are the newer trends observed in emergency legislation in Indiana and should be suggestive of changes which must be made in the poor law of tomorrow.

²⁰ "A Bill for an Act concerning the executive, including the administrative department of the government of the state of Indiana, repealing all acts and laws in conflict herewith and declaring an emergency," February 3, 1933, *ibid.*, chap. iv, p. 7.

CHAPTER X

REVIEW

The Jesuit priests, French fur-traders, and soldiers who first entered the territory of which Indiana was a part were later followed by pioneers who lived in scattered agricultural communities. As they began to establish more permanent settlements they introduced ideals of government, religion, and education such as they had known in their former experiences.

The laws of the Northwest Territory, many of which were adopted from the older state statutes, were inherited by the various states which had originally made up that great region. They contained provisions that were not applicable to the condition of the new region, and yet they were accepted by the states and have set a pattern which has been carried down to the present time in some instances. Particularly is this true in relation to the poor law, with its system of local administrative units, its overseers of the poor who determine eligibility for relief according to the old principles of settlement, without any supervision from a central authority.

It is interesting to notice that in Indiana the county became the administrative unit and remained so for almost a century; however, the township trustees administered the relief and very early in the state's history (1831) there were five distinct ways by which public authorities cared for the poor; namely, (1) by the gathering of poor in asylums or farms under the superintendence of the county officers; (2) by placing a similar group under the control of a private person, who had contracted with the county for this service; (3) by farming out the poor to individuals who received compensation for their care from the county; (4) by apprenticing minors, and (5) by outdoor relief furnished by the township trustees from the county treasury. (As all but the poor asylum care and outdoor relief have been abolished the care of the poor has developed within the state.)

Early poor asylum care included all classes of persons who have gradually been removed from it due to some special provision made

in relation to their need for a more specialized kind of treatment. Beginning in 1844 with the deaf, the state has gradually assumed responsibility for the blind, insane, feeble-minded, epileptic, and for certain classes of the sick poor as well as the detention and reformation of delinquents. This development has left poor asylums largely as homes for the aged poor. While the early and intolerable conditions which were found in the asylums have been remedied to some extent, many of the undesirable features of poor asylum care remain unchanged. At present it is the intention of the law that when persons become permanent charges on the public they are to be transferred to the county poor asylum. Others, in need of temporary aid, are granted it by the township trustee, who is ex officio overseer of the poor. At first there was no supervision of his work, as he filed bills which were paid from the county treasury, probably without question. Because of serious abuses which arose under this system a series of provisions were enacted in an attempt to regulate the relief expenditures and have relief used more constructively. This was a result of the work done by the Board of State Charities after its creation in 1889. The first of these laws was a step toward supervision of outdoor poor relief administration through a system of requiring regular poor relief reports from every overseer of the poor. This has been of much significance in Indiana's poor relief program. In an effort to remedy abuses of the overseers, each township was made responsible for levying the taxes necessary to care for their own poor, this money being advanced by the county treasury, which was later reimbursed by the township. This trend seems contrary to the present feeling, which favors the county unit; however, the problems connected with the lack of supervision forced the responsibility on the local public, which was made more aware of the abuses because its attention was called to the obtaining of relief funds which formerly was assumed by the county. This situation was one that presented questions not unlike those of the present time, which relate to the division of responsibility between the local, state, and federal governments, both in regard to the extent of assistance to be secured from each source and the program for supervision. In the most advanced legislation, passed in relation to Indiana's poor, the law embodied principles which had been recognized and successfully used

by the private charity organizations. How these were applied by those who were engaged in the welfare services cannot be stated here; however, it was generally recognized as a progressive step in poor relief administration. The Board of State Charities, through its educational program, did much to help the overseers carry out the more modern ideas, and in turn the state was enabled to study its problem of pauperism as well as the methods by which relief might be given without encouraging dependence.

The judicial decisions convey the liberal interpretation which the court gave, particularly in its recognition of individual needs which required individualized treatment. This is in keeping with the meaning of the law which encouraged that concept.

Throughout the long period in which a finer social attitude was developing and stimulated by the legislature, the courts, the Board of State Charities, and the public, no change took place supplying the kind of personnel needed to administer relief accordingly.

The trustees who had other duties besides that of investigating the poor, had in many cases done the best that they could in view of their lack of experience and training in social welfare. However, this factor, together with inadequacies of poor asylum care and the determination of relief on the basis of settlement, present more limitations now than they perhaps presented at an earlier period in the state's development.

Because of the great number of persons having to seek public assistance, the inherent weaknesses of an antiquated poor law system have been revealed. While emergency provisions have filled in the weakest places, it must be remembered that it has been temporary and must be replaced by something more permanent and more in keeping with modern economic life and social activity.

PART II
STATE CARE OF THE SICK POOR
IN INDIANA

By MARY WYSOR KEEFER

CHAPTER I

THE TRANSITION FROM HOSPICE TO STATE HOSPITAL

The hospice, refuge and shelter for the sick poor, is gone, and in its place stands the stone edifice of the modern hospital, a monument to the advance of medical science. With the growth of medical knowledge has come a growing tendency toward specialization. In order for the sick to reap the benefits of highly specialized services, access must be had to the use of expensive equipment. The costly diagnostic and therapeutic apparatus, the well-equipped laboratory, require a large capital investment and are essential to a good hospital. An institution built in accordance with modern principles of sanitation, the diet kitchen, the highly skilled technicians—these are some of the facilities of the modern hospital which have raised the cost of hospital care beyond the reach of the poor and of the people of moderate means. To follow the slow process of this evolution is no part of the present discourse. The scene has changed; the emphasis has shifted. Hospital care for the sick is no longer a provision primarily for the poor.

In contrast to the poor who formerly sought shelter within its walls the well-to-do seek in ever increasing numbers the skilled services of the hospital where alone they can have the advantages of this technical equipment. With the advance of medical science has come not only an increased cost for medical care but also an increased demand for it. But the ability to pay is not commensurate with the need. The well-to-do have been charged for the care of the poor. The government-owned hospitals have been filled to capacity while private hospitals have been only partially occupied. The problem presented for solution is the distribution of medical service in accordance with the individual needs rather than in accordance with ability to pay. By what means can the resources of the hospital

be made more readily accessible to the sick poor for whom it was primarily intended?¹

Although care for the indigent sick has always been an accepted responsibility of communities and charitable individuals and organizations it has been a haphazard affair, generally without a well-defined scheme or pattern.² A study of the increasing responsibility of the state for medical care is pertinent at the present time when there appears to be emerging from the blurred confusion of the past the clearly sketched outline of a trend to supply medical service through use of the state university hospital.³ In Indiana this plan has been in the process of development since 1914, and is representative of the movement, especially evident in the Middle West, of combining in the university hospital the opportunity of providing the best professional service possible for residents of all parts of the state with that of supplying teaching facilities for the state medical school.

THE PROBLEM OF MEDICAL CARE

The problem of medical care is a matter of great concern and manifest interest to the bulk of the people of the country. It is a problem of timely interest not only for the indigent but for that great group

¹ "The hospital has become a medical workshop. The original function of the hospital was the reception and care of the sick poor, and few persons who had homes to go to and means to support themselves ever went to a hospital" (Michael M. Davis and C. Rufus Rorem, *The Crisis in Hospital Finance, and Other Studies in Hospital Economics* [1932], p. 59).

² "If public health work in the past had developed in orderly fashion rather than upon the impulse of philanthropy, which however laudable, was usually limited to individualized groups, it is quite likely that more dramatic results would have been achieved by this time, at lower cost" (*ibid.*, p. 232).

³ "The American Medical Association figures for 1931 indicate that about 40 per cent of hospitals reporting social service departments are tax-supported. Conspicuous in that group are . . . state hospitals, especially in the Middle West where there is affiliation with state university medical schools, and where programs of social work have been undertaken which are making contributions to the health field and to the field of social service. . . . Following the general trend toward public social work there is evidence of the steady growth of government-owned hospitals and the corresponding development of social work in these institutions" (Helen Beckley and Kate McMahon, *Social Work Year Book* [Russell Sage Foundation, 1933]; reprinted in the *Bulletin of the American Hospital Association*, VII, No. 4 [April, 1932], 83).

of people of the middle class to whom the advent of sickness often means the difference between self-support and dependency. For a large part of the families whose income is \$1,200 or under the financial burden of sickness is either "medical charity or financial tragedy."⁴ Largely because of inability to bear the expense of medical care, much of the illness in this country goes unattended by a physician.⁵ The first hospitals in the United States were founded as charitable institutions by private individuals. Private initiative and private funds have usually supplied the means of giving needed medical service to the poor. They have been the forerunner of public effort, and pointed the way for governmental institutions. Along the east coast infirmaries were established in connection with some of the poorhouses of governmental units, and isolation hospitals or "pest houses" were set up, often by the states, for quarantine of patients with contagious diseases. From this beginning the pattern was drawn. The state has generally accepted responsibility for treatment of the insane, epileptic, tuberculous, and for patients with contagious diseases, but private philanthropy and local governmental units have attempted to continue to carry the load of acute illnesses. Economic conditions and the increased cost of medical care have put a financial strain on the private hospitals which they are ill-prepared to stand, and recent studies of hospital finance seriously question the ability of the voluntary hospital system to survive.⁶ It is believed that only tax funds, usually from the state, can supply a large and stable enough source of support to furnish medical care more nearly in accordance with the people's need. Usually upon the state must rest the responsibility of co-ordinating medical facilities

⁴ D. E. Ruggles, "Meeting the Present Hospital Crisis," *Bulletin of the American Hospital Association* VII, No. 4 (April, 1933), 10-11.

⁵ "... Approximately only 46 per cent of all illness receives medical attention" (*ibid.*, p. 13).

⁶ "Economic conditions on this continent and in the rest of the world have seriously affected our hospitals. . . . Without being pessimistic as to the future, the American Hospital Association would be unmindful of the members' interests if it did not recognize the possible breakdown of the voluntary hospital system in America" (letter from Mr. Paul H. Pesler, President, American Hospital Association, to members regarding problems confronting the Thirty-fourth Annual Conference of the Association in Detroit, September 12-16, 1932; reprinted in *The Crisis in Hospital Finance*, p. 3).

and health agencies so that a more uniform service may be extended to rural areas and to populous centers alike.⁷

The facilities of the large hospital are found, as a rule, in the cities, and it is there that the most expert service may be found. But the patients from the rural areas are left with inadequate facilities for care. Responsibility must be assumed not alone for treatment of the acutely ill but also for the chronically sick patient. Facilities must be found to care for the convalescent in order that he may have an opportunity to recover from his illness and return to his normal mode of life. Attention and thought must be given to the provision of resources for the prevention of devastating illnesses. It is not enough that people should be given an opportunity for remedial treatment. They must be assisted to protect themselves from preventable disease.

TYPES OF STATE CARE AVAILABLE

Early recognition was given by the states to the fact that disease is a contributory factor to indigency, and the use of the almshouse for care of the sick poor was encouraged.⁸ An outgrowth of this type of care is found at the present time in a number of states⁹ where a state general hospital or infirmary provides hospital care for the indigent sick. The District of Columbia and all except eight¹⁰ of the states have some facilities for treatment of physical ailments, including

⁷ I. S. Falk, C. Rufus Rorem, Martha D. Ring, *The Costs of Medical Care*, Publication No. 27 of the Committee on the Costs of Medical Care (1933), pp. 587, 590.

⁸ "The expenses for physicians and nurses, in attending paupers in towns where there are no poor houses, form a very prominent article in the amount of taxation. Pauperism and disease, except in an almshouse, are generally found associated together, and hence it is, that this item of expense is so much complained of in the towns just alluded to" (Report of the secretary of state in 1824 on the Relief and Settlement of the Poor; reprinted in the thirty-fourth *Annual Report* of the State Board of Charities of the state of New York, I [1900], 949).

⁹ Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Mexico, Pennsylvania, Rhode Island, West Virginia, and Wyoming. States are given according to the listing of registered hospitals in the *Journal of the American Medical Association*, XCVIII (June 11, 1932), 2079-2141; and to data in *American and Canadian Hospitals*, edited by James Clark Fifield with the co-operation of the American Hospital Association (1933).

¹⁰ Alabama, Arizona, Florida, Idaho, Nevada, Tennessee, Utah, and Washington (*Journal of the American Medical Association*, pp. 2078-79, 2086-89, 2110, 2129-30, 2133, 2135-36).

tuberculosis and special hospitals. The District of Columbia and all but twelve states¹¹ have one or more state hospitals for the care of tuberculous patients. Twenty-four states¹² have provision for general medical care, of which eighteen¹³ use teaching hospitals which are affiliated with or are a part of the state medical school. Four¹⁴ of these states have general hospitals in addition to the state university hospital. Nine states¹⁵ have special orthopedic hospitals, including hospitals for crippled children; two¹⁶ have general children's hospitals; two states¹⁷ have hospitals specified as miner's hospitals; two¹⁸ have cancer hospitals: one¹⁹ has a state narcotic hospital: one²⁰ a special eye, ear, nose, and throat hospital: and one²¹ a general hospital exclusively for colored people.

In some of the state university hospitals the object is not so much to provide medical care for the indigent as it is to supply facilities for teaching medical students. But the twofold purpose is especially evident in those hospitals established during the last two decades. Recognizing the uneven quality of care afforded by the resources of the small rural communities in contrast to those of the large urban

¹¹ Alabama, Arizona, California, Colorado, Florida, Idaho, Illinois, Nevada, New Mexico, Tennessee, Utah, and Washington (*ibid.*, pp. 2078-79, 2080-85, 2086-91, 2110, 2112-13, 2129-30, 2133, 2135-36).

¹² California, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, West Virginia, Wisconsin, and Wyoming (*ibid.*, pp. 2080-85, 2089-96, 2097, 2098-2108, 2109-10, 2120-28, 2134-35, 2136-39).

¹³ California, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, Virginia, and Wisconsin (*ibid.*, pp. 2080-85, 2089-96, 2097, 2098-99, 2102-6, 2107-8, 2109-10, 2120-27, 2134-35, 2137-39).

¹⁴ Louisiana, Maryland, Michigan, and Pennsylvania (*ibid.*, pp. 2097, 2098-99, 2102-4, 2124-28).

¹⁵ Massachusetts, Minnesota, Missouri, Nebraska, New York, North Carolina, Oklahoma, Pennsylvania, and Wisconsin (*ibid.*, pp. 2099-2102, 2104-6, 2107-8, 2109-10, 2113-19, 2122-23, 2124-27, 2137-39).

¹⁶ Indiana and Oregon (*ibid.*, pp. 2092-93, 2123-24).

¹⁷ Maryland and New Mexico (*ibid.*, pp. 2098-99, 2112-13).

¹⁸ Massachusetts and New York (*ibid.*, pp. 2099-2102, 2113-19).

¹⁹ California (*ibid.*, pp. 2080-84).

²⁰ Illinois (*ibid.*, pp. 2089-91).

²¹ Texas (*ibid.*, pp. 2130-33).

areas these states have sought to meet the needs of its resident poor through the use of the state university hospital. Of this latter group is the state of Indiana, where the avowed purpose of the university hospitals is "to meet the needs of those persons without means, or with limited means, so that they may avail themselves of the best possible professional care through this institution."²²

INDIANA REPRESENTATIVE OF A CURRENT TREND

Indiana was selected for this study as it seems representative of the current trend of trying to supply expert medical service to people from all parts of the state through the medium of the university hospitals. Indiana also offers an opportunity to compare this plan with other systems which are still in use in different parts of the state. The county still retains the responsibility for furnishing adequate care for the sick poor and solves the problem according to its own convictions—sometimes by use of the poorhouse, sometimes by payments to a private physician, and sometimes by building its own hospital or by subsidies to private hospitals.

Indiana has been looked upon for many years as more or less representative of average American life. In 1929 was published a sociological survey of life in the average American family, based on the study of an Indiana city.²³ In the same year one of the counties in Indiana was used for a study of medical facilities available "because it seemed to be as nearly typical of a midwestern rural county as any county which might be found."²⁴ The center of population has been in Indiana since 1890; there are 89.8 inhabitants per square mile; 89.5 per cent of its population twenty-one years of age or over are native-born whites; its rural population is almost the same as the urban population, 55.5 per cent being in the cities.²⁵ And finally, the writer confesses to a deep personal interest due to a lifelong association with its people; to a familiarity with its early history acquired

²² *American and Canadian Hospitals* (William H. Coleman Hospital), p. 347.

²³ Robert S. Lynd and Helen Morrell Lynd, *Middletown, a Study in Contemporary American Culture* (1930).

²⁴ Allon Peebles, *A Survey of the Medical Facilities of Shelby County, Indiana: 1929*, Publications of the Committee on the Costs of Medical Care, No. 6 (1930).

²⁵ United States Bureau of the Census: *Population Fifteenth Census of the U.S.*, II, 20; I, 15; III, 656; I, 15.

from listening to the tales of its pioneers; to some knowledge of health conditions from hearing of the old settlers, yellow with jaundice and shaking with "ague," who came from the swamplands to sit in the sun around the "public square" in town to get rid of their chills; of the smallpox epidemic of 1893; and to memories of the kindly ministrations of the old family doctor who was one of the pioneer physicians of Indiana.²⁶

SCOPE OF THE STUDY

In the following study an attempt is made to examine the operation in Indiana of the practice of the state of making available to its inhabitants the best professional medical service which the state affords. A review has been made of the early health conditions of Indiana with the idea of ascertaining the measures which were set up to deal with the problems of sickness; the adequacy of those measures; the progress which has been made in developing more satisfactory provisions for care; and the extent to which present resources are meeting the needs of the people. The discussion is restricted to that group of patients usually thought of in connection with the "general" hospital. The study does not include treatment for the insane, feeble-minded, or epileptic for whom the state of Indiana has accepted responsibility over a considerable period of time.²⁷ Neither has any space been given to the activities of private charities or individuals who supply resources for treatment of the sick poor. Mention is made of state care for tuberculous patients, but the subject is not discussed in detail. Only a brief review is given of care provided through the local county government system, as the primary interest is the study of the responsibility of the state for medical care, and especially the plan being developed for use of the state medical school and its teaching hospitals.

²⁶ Dr. G. W. H. Kemper, author of *A Medical History of Indiana* (1911).

²⁷ Care of the insane since 1844 (*Indiana Laws* [1844], p. 50); Care for the feeble-minded since 1879 (*ibid.* [1879], p. 76); Care for the epileptic since 1905 (*ibid.* [1905], p. 483).

CHAPTER II

THE DEVELOPMENT OF THE NEED FOR MEDICAL CARE

Indiana is thirty-seventh among the states in size, with an area of 36,045 square miles. In population it is eleventh in rank; the number of its inhabitants has grown from 5,641¹ in 1800 to 3,238,303 in 1930. The percentage of its urban population in 1930 was 55.5 as compared with 56.2 for the United States as a whole. Its estimated wealth per capita in 1922 and 1912 corresponded closely to that of the United States; in Indiana in 1922 it was \$2,942 per capita and for the country as a whole \$2,918; in 1912 the figures were \$1,954 per capita for Indiana and \$1,950 for the United States. There are five cities in the state with a population of 100,000 or more inhabitants, and only twelve places with a population between 25,000 and 100,000. It has thirty-four cities with 10,000 inhabitants or more. Its capital, and largest city, is Indianapolis, with a population of 364,161. Five of its cities² with a population of 50,000 or over are located in the northern part of the state; the other two³ over 50,000 are in the southwestern part of the state.

The social needs and institutions of a people are largely determined by their characteristics and the conditions under which they live. The people who settled Indiana were poor so far as money and material possessions were concerned.⁴ They came empty-handed to

¹ Includes population (3,124) of those portions of Indiana Territory which were taken to form Michigan and Illinois territories in 1805 and 1809, respectively. United States Bureau of the Census, *Fifteenth Census: Population* (1930), I, 529.

² Fort Wayne, 114,946; South Bend, 104,193; Gary, 100,426; Hammond, 64,560; and East Chicago, 54,784. *Ibid.*, pp. 330-32.

³ Evansville, 102,249 (in the extreme southwest corner) and Terre Haute, 62,810 (near the western boundary and slightly south of the center line east and west).

⁴ "Taken all in all, it may be assumed that the early settlers of Indiana were the poorest class of men, in so far as money was concerned, that ever settled any State in the Valley" (*Readings in Indiana History*, compiled and edited by a committee of the History Section of the Indiana Teachers' Association; Published by Indiana University, 1914, citing an address by David Demaree Banta [1891] in the *Indiana University Alumni Quarterly* [I, 283-86], pp. 259-60).

their fight with the wilderness to build themselves a home. "The immigrant who trudged west on foot or came on horseback even was fortunate if he got through with a skillet and a pot."⁵ They were a pugnacious, impetuous, extravagant people; belligerently patriotic; violently partisan; strongly sectarian in their religion; but withal orthodox in their beliefs; conservative and reactionary in their institutions; and intensely sensitive to criticism from outsiders. They brought with them into their exile in the new country old-English traditions to which they clung and upon which they sought to establish society at odd moments snatched from their continuous struggle for existence. One writer states that "of all the Western States, Indiana presented the greatest natural obstacles to the homemaker." The settlers of Indiana had to wrest their living from a territory covered with forests of exceptional density, and filled with swamplands, which almost defied their efforts to make farms and build settlements. Besides these difficulties was the constant sickness which prevailed throughout the state—the smallpox epidemics, the malaria, and the "milk sickness"—arising from the unsanitary conditions of the land. All of these circumstances served to delay the progress of the state and the development of material wealth. For a time her name became a byword throughout the country because of her bad roads, her poor schools, and the fever and ague.⁶ Politics, too, had a strong influence upon her development. Corruption in government and in social and economic institutions of the state, alternating with spasmodic periods of reform, has figured prominently throughout the history of the state. It made its appearance in the dishonesty of the Indian traders; in the questionable practices of the justices to whom the government of the Northwest Territory was largely intrusted; in the work of its professional officeholders who frequently controlled state and local government; in the appointment of officers in the state militia; in the control of its banks, its internal improvements, and its schools and charitable institutions. Corrupt politics, which, though sometimes temporarily halted, have never been completely routed, early gained a hold on Indiana.

⁵ Logan Esarey, *History of Indiana* (3d ed., 1914), I, 478.

⁶ Readings in Indiana History, p. 260.

SICKNESS AMONG THE PIONEERS

Although the pioneer is depicted as a robust, healthy individual who fared well without the benefits of sanitation, hospitals, and modern medicine, the facts of the case do not bear out this concept. The forests and swamps abounded in sources of infection from which malarial and intermittent fevers continually attacked the settlers' constitutions;⁷ the fly and the mosquito were unsuspected carriers of disease; smallpox, "milk sickness,"⁸ pneumonia, jaundice—all laid waste to the population. In the summer no family was spared from recurrent attacks of violent shaking chills and burning fever, and children died by the hundred from cholera infantum. During the winter exposure brought on diseases which, neglected, often developed into pneumonia or "consumption," and croup produced further fatalities among the children. "It was not uncommon for a whole neighborhood to be desolated and towns depopulated in a single season."⁹

Vincennes, shortly after 1711, was ravaged by a smallpox epidemic which killed more than half of the inhabitants for whom the only available treatment apparently was the incantations of the Indian medicine man who invoked the aid of the great Manitou for their relief.¹⁰ The same city was visited by another epidemic of the

⁷ Charles Kettleborough, *Drainage and Reclamation of Swamps and Overflowed Lands*. Indiana Bureau of Legislative Information, Bull. No. 2 (April, 1914), pp. 16-17.

⁸ "The persons owning milk cows permitted them to graze on the rich range of the country, and from some cause the cows contracted a disease called Tires, or Milk-sickness. The disease was thus conveyed to the people and in many cases proved fatal. A tired and weary feeling was the chief characteristic of this disease, and many times the little calves would reel and fall down while sucking milk from their mothers. As the country was cleared this disease became less prevalent, and in a few years entirely disappeared. The same was also true of the ague which was so prevalent" (Col. William M. Cockrum, *Pioneer History of Indiana* [1907], p. 401).

⁹ "Occasionally there was an unbroken family circle but in most cases half the children died in infancy, and it is not far from the fact to say that half the children had lost one or both parents before they reached the age of fourteen. Such diseases as smallpox, cholera, yellow fever, milk sickness, and typhoid fever were beyond medical skill and ran their mysterious course unmolested. . . . The hand of Providence was often seen in these afflictions and public fast days were sometimes ordered by the General Assembly" (*Readings in Indiana History*, p. 344).

¹⁰ "The Medical History of Vincennes," *Transactions of the Indiana State Medical Society*, 1874, cited in G. W. H. Kemper, *A Medical History of the State of Indiana* (1911), p. 4. (These publications will be referred to hereafter as the "Transactions.")

disease in 1793 with about seventy-five fatalities. The period from 1818 to 1830 was the time when sickness wrought greatest havoc in the state. Physicians were scarce and overworked, and access to the patients was delayed by bad roads and almost impassable streams.¹¹ Such care as the sick received was given mostly by members of the family or friends who administered their home-made remedies to the living and dug the graves for the dead. A vivid picture of the continual fight against disease is given in the account of a pioneer woman of the hardships which she, with her husband and two-year-old child, endured in the struggle to establish a home.¹² She relates a story of frequent attacks of fever; of the birth of a child at which time her only aid was the service of a nurse for two days, after which she got up and performed her work as best she could; of help given to sick neighbors whom there was no one else to aid; and of the three long winter months when she was sick with "ague" during which time she saw only one other woman, and her husband was "cook, washerwoman and milkmaid."¹³ In 1822 Indianapolis was seized

¹¹ "They rode on horseback to visit their patients, day or night, far or near, through the dense woods and over sloshy paths and rough corduroy roads, fording or swimming streams and enduring innumerable hardships, which the physicians of the present day would not dare to encounter. . . . Whole settlements were at times stricken down and rendered almost helpless. It is reliably stated that, in the fall of 1821, there was only one well man in the city of Columbus, a stalwart six-footer, who had evidently been brought up in a swamp. He was cook and nurse to the entire community, and his memory deserves to be perpetuated" (Geo. T. MacCoy, *Pioneer Physicians of Bartholomew County in Kemper*, *op. cit.*, p. 110).

¹² *Readings in Indiana History*, pp. 344-47. James Harvey Stewart, "Sickness and Exposure in the Wilderness (account by Mrs. Frances Steirlin), *Early Settlement of Carroll County* (1872), pp. 77-80.

¹³ "On the 16th day of February, 1825, . . . I left Wayne County, Indiana, to emigrate to the Wabash country. Our journey lasted fourteen days. We had rain every day except two during the trip. . . . The country from the White river to the Wabash was an unbroken wilderness, uninhabited, with the exception of a few Indians at Throntown. . . . I was on the horse from sunrise until dark with a two-year-old child in my arm. . . . On the day following he [the husband] was taken sick and kept down about six weeks. We thought he would die. We had no doctor nor medicine. John Odell came to see us and brought a dose of tartar emetic and some blister flies. These with some butternut pills composed our stock of medicine, with a bottle of Bateman's drops, which we used as an anodyne (medicine to soothe pain).

"He recovered, and we all kept well until August, when he was attacked again with fever and ague, and was very sick for some time. I was confined the 21st of August. . . . A man named Luce took sick and died near us. As almost everybody was sick, my

with an epidemic of intermittent and remittent fevers which afflicted 900 of the 1,000 inhabitants of the town and the farms nearby.¹⁴

Waves of epidemics continued for years to sweep over large portions of the state. In 1843 in several counties in Southeastern Indiana there was an epidemic of erysipelas popularly known as "black tongue."¹⁵ There were epidemics of scarletina in 1837-38, and in 1846-47; of dysentery from 1849-52; of "milk sickness" in 1852.¹⁶ Asiatic cholera was especially prevalent along the navigable waterways of Indiana from 1849 to 1852,¹⁷ whither it made its way from New Orleans up the Mississippi and Ohio rivers.

PIONEER DOCTORS

In the early days the settlers were largely dependent upon their own home-made remedies and the advice of neighbors in the treatment of their ailments. In some settlements¹⁸ they resorted to the

husband and I had to see to him. My husband was sick and my baby was only a week old. We succeeded in getting help to dig his grave. . . . Another family came to the neighborhood, who . . . all got sick and lost a child that is buried near the spot we now occupy. . . . The next December my husband came up to Deer Creek and built a cabin. February 15, 1826, we started for our new home. We arrived here . . . on the 19th. . . . The snow was about shoe-top deep in the house. We threw down some clapboards, and on them we placed our beds. . . . The next morning the mud was as deep in our cabin as the snow had been the evening before. . . . I was taken sick about the first of July, and both our children. I shook forty days with the ague without cessation. We then got some quinine, which stopped it in ten days" (*ibid.*, pp. 344-46).

¹⁴ Dr. S. G. Mitchell, "Historical Notes on Indiana," published and communicated to the *Gazette*, Indianapolis, March 6, 1822, in Kemper, *op. cit.*, p. 50.

¹⁵ Dr. George Sutton, "Remarks on an Epidemic Erysipelas Known by the Popular Name of 'Black Tongue,' Which Prevailed in Ripley and Dearborn Counties, Indiana," *Western Lancel*, November, 1843; cited in Kemper, *op. cit.*, pp. 160-61.

¹⁶ *Transactions* for 1852, p. 33, "Report of the Committee on the Practice of Medicine," cited in *ibid.*, p. 162; *Transactions* for 1853, pp. 24-57, "Practice of Medicine," by Drs. W. H. Byford, M. H. Harding, and J. N. Graham, cited in *ibid.*, p. 362; *Transactions*, 1853, p. 176, Dr. George Sutton, "Preliminary Report on the Milk Sickness," cited in *ibid.*, p. 363; *Transactions*, 1854, p. 43, Dr. James S. McClelland, "Trembles or Milk Sickness," cited in *ibid.*, p. 363; *Transactions*, 1874, pp. 113-27, "Morbo Lacteo," cited in *ibid.*, p. 363.

¹⁷ *Transactions*, 1853, pp. 109-75, Dr. George Sutton, "Asiatic Cholera," cited in *ibid.*, p. 363.

¹⁸ "Dr. Buck-on-ga-helas was largely engaged in the practice of medicine in Fort Wayne in 1804. He was physician and surgeon to Little Turtle, the great commander of the Miami tribe of Indians. . . . His practice, however, was not confined to the

services of the Indian medicine man, who sought to effect a cure, sometimes by the use of herbs, and sometimes by means of incantations and weird concoctions which often he drank himself. The first white doctors were connected with the soldiers and missionaries and usually did not remain long in one place.¹⁹ Doctors were scarce²⁰ and the need of them so great that in the period from 1816 to 1825, when new settlements were being laid out, it was customary to offer a free lot to the first physician who would settle in the village.²¹ Those physicians who had any formal training came from the eastern and southern states, but most of the early doctors learned their profession from reading and observation under an established practitioner.²² Often the village doctor combined the practice of medicine with the duties of postmaster, minister, or judge. Some were government surveyors, and many served in the General Assembly as legislators.²³

As the people were poor the doctor received small pay for his services, and often none at all. He attended the poor without remuneration and gave them the same attention which he gave to his

Indians, but was quite extensive among the white inhabitants. In 1807 an Indian named Ma-te-a acquired some celebrity as a doctor, and was employed by many of the French settlers in preference to any other" (*Transactions*, 1874, "The Medical History of Allen County," cited in Kemper, *op. cit.*, pp. 28-29).

¹⁹ Kemper, *op. cit.*, pp. 4, 7, 24-25, 62-63.

²⁰ *Pioneer Physicians of Bartholomew County*, p. 100.

²¹ Logan Esarey, *A History of Indiana*, p. 273.

²² "The pioneer doctors learned all they knew by reading, observation and instruction under established practitioners and by their own after-experience. Men of fair education and good common sense in a few years gained good reputations as successful and safe physicians" (George T. MacCoy, *Pioneer Physicians of Bartholomew County*, in Kemper, *op. cit.*, p. 109).

"Dr. Henry B. Roland came from Virginia and located in the county between Columbus and Newbern. Dr. Roland was always considered one of the best general practitioners in the county. . . . He studied his profession whilst he was paying a debt in the true old Virginia style—in jail. At that time all bankrupts were furnished boarding and lodging, and sometimes medical attendance, whilst paying their debts as bankrupts in prison. While he lay in jail, a kind medical friend was good enough to loan him the necessary books and give him instruction in the divine art of healing the sick, and he came out of jail a fair medical practitioner for that date" (*ibid.*, p. 106).

²³ "Medical History of Rush County," *Transactions for 1874*, in Kemper, *op. cit.*, pp. 75, 81.

paying patients. The stories of the early physicians show them to be a hard-working group who suffered many privations in the practice of their profession; who often succumbed to exposure or to the diseases they treated, and who rarely were successful in amassing sufficient wealth to care for them in their old age.²⁴ They traveled on horseback, sometimes fifty or sixty miles, to see a patient, in all kinds of weather. They rode up creek beds to avoid the wild animals of the forest, and often the horse became mired in the bad roads while the rain beat down upon horse and rider.²⁵ The treatment which they were able to administer to their patients was greatly restricted both by their own knowledge of surgery and medicine, and by the inadequate supply of medicines. The early practitioner depended upon the efficacy of "bloodletting" and when the patient became weak from loss of blood the doctor gave him calomel or a concoction made from the herbs and plants which he carried in his saddlebags. Drugs, for the most part, were manufactured in Europe or in the eastern states and were brought to Indiana by way of New Orleans and the Mississippi River or by the boats from Cincinnati. "Quinin," which was in great demand for treatment of the dread malaria, was quoted from \$6.00 to \$30.00 an ounce, and was too expensive for many of these poor doctors to purchase.²⁶ The fees for their services were usually one dollar for town visits and extra

²⁴ "The Medical History of Vincennes," "Medical History of Terre Haute," cited in Kemper, *op. cit.*, pp. 13, 58.

²⁵ *Ibid.*, "Medical Reminiscences of Madison," p. 44; "Medical History of Rush County," p. 83; "Medical History of Delaware County," p. 89; "They [the doctors] performed the most heroic service, and oftentimes without reward, at the call of their patients, at any hour, in storm and stress, and in midnight darkness, with nothing to guide them, and oftentimes straying from the road or path; yet they performed these labors with pleasure and their reward was only the welfare and health of their patients" (p. 141).

²⁶ "For some time after quinia was introduced the price was such that Hoosiers could not afford to use it. The first I used cost at the rate of \$30.00 per ounce" (Dr. Joel Pennington, *Transactions*, 1873, cited in Kemper, *op. cit.*, p. 36).

"In 1846 the congestive fever, as then called, made its appearance. Many died; in fact all the patients of some physicians. Dr. Moore, of Cumberland, contended that bleeding was the only remedy; after that, calomel to ptyalism. He lost nearly every case. . . . The great hindrance to the use of quinin was its cost and the scarcity of money. Quinin cost \$6.00 (I think at one time \$8.00) an ounce, and scarce at that. Dr. Hervey bought up a number of fat cattle, drove them to Indianapolis, sold them for \$7.50 a head, and bought quinin with it" (*Transactions*, 1874, p. 74, cited in *ibid.*, p. 95.)

charges for medicine or prescriptions.²⁷ Their remuneration was evidently not sufficient to give most of them a lucrative practice.²⁸

Although the legislature of Indiana Territory granted a charter for Vincennes University in 1807 with the privilege of founding a medical department in its course of instruction, the medical department was never organized.²⁹ There were several sporadic attempts in different localities to start small classes of medical instruction, but each venture survived only a short time. Apparently it was not until well into the second half of the nineteenth century that regular medical instruction was available in the state.³⁰ Attempts were made by the General Assembly to regulate the practice of medicine in Indiana by laws passed in 1816, 1825, and 1830, which established boards of supervision corresponding to the judicial districts of the state.³¹ The boards were given authority to examine and license to practice anyone whom they considered qualified. A scale of charges for medical service was fixed forbidding a doctor from charging more than twelve and a half cents a mile for the distance traveled and double that for night visits. The law did not prevent anyone from practicing without a license but he had no recourse to the law to help him collect his fees.³² These laws were omitted from the revision of 1843 and, until 1885,³³ the state was "at the mercy of anyone who chose to assume the name of doctor."³⁴ Quackery, "herb doctors," and all kinds of irregular practitioners were always a source of annoy-

²⁷ *Ibid.*, "Early Medical History of Vincennes," p. 12.

²⁸ "Dr. J. N. Mendenhall . . . was a well-qualified physician and an honorable gentleman. He had a good practice, but resigned it in a few years and turned his attention to speculation in real estate, which proved to him a more lucrative business. He believed the responsibility attached to the practice largely overbalanced the remuneration it afforded" (*ibid.*, Pennington, p. 37).

²⁹ *Ibid.*, "Early Medical History of Vincennes," p. 11.

³⁰ Dr. Thad M. Stevens, *Transactions*, 1874, p. 17; cited in Kemper, *op. cit.*, pp. 69-70.

³¹ *Laws of Indiana* (1816), p. 161; *ibid.* (1825), p. 40; *Revised Laws of Indiana* (1831), p. 372.

Kemper, *op. cit.*, p. 63, "Copy from Original Proceedings of the First Medical District Society, Indiana," Vincennes, June 2, 1817.

Ibid., pp. 166-67; "A Memorial from the Evansville Medical Society," *Transactions*, 1852, p. 6.

³² Logan Esarey, *A History of Indiana*, p. 334.

³³ *Laws, Special Session* (1885), pp. 197, 199.

³⁴ Kemper, *op. cit.*, p. 167.

ance to the medical profession of the state. The simple folk of Indiana bought their quack remedies with a credulous faith in their efficacy which has never been entirely dissipated. Concerning the causes which allowed this baneful practice to influence the medical profession of Indiana for many years, one early physician writes,

In the early history of our state there were stringent laws upon our statute books regulating the practice of medicine. Possibly they were too drastic for those primitive days. Physicians of high grade could not always be secured, nor properly compensated for their services, and so men of the "Doc Sifers" stamp and unskilled midwives were suffered, through sympathy, to attend our early inhabitants. Nevertheless, politicians have, as a rule been the friends of quackery and the scorers of legitimate medicine.³⁵

EARLY PROVISIONS FOR CARE OF THE SICK POOR

From such a background of a struggle for existence against climate, wilderness, and disease it might be assumed that all were sick and all were poor. And that assumption would not be far from the truth. There was no such thing as organized charity or philanthropy.³⁶ There were some people, however, who, poorer than the others, had to be cared for at public expense. The poor law of 1795 for the Northwest Territory gave to the overseers of the poor of each township the power to make assessments for "relieving such poor, old, blind, impotent, and lame persons, or other persons not able to work within the said townships, respectively; who shall therewith be maintained and provided for."³⁷ It may be inferred that this classification included the sick, but the only special mention made of the sick is in the instructions to the overseers as to method of procedure when "the poor of one place sicken or die in another."³⁸ Indiana Territory continued to operate under the same laws. As a state, Indiana showed its conservatism and its love for old traditions by providing in its constitutions of 1816 and of 1851 that all laws in force are not inconsistent with the new constitution should continue in full force until they expired or were repealed.³⁹

³⁵ *Ibid.*, p. 165.

³⁶ Esarey, *op. cit.*, p. 492.

³⁷ *Statutes of Ohio and of the Northwest Territory* (adopted or enacted from 1788 to 1833 inclusive), I, chap. liv, 176.

³⁸ *Ibid.*, p. 181.

³⁹ Indiana Constitution, 1816, Art. XII, sec. 4; Constitution, 1851, Art. XVIII, sec. 1.

The Constitution of 1816 imposed upon the General Assembly the duty of providing one or more farms to be used as an asylum for "those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence [original spelling] of society."⁴⁰ The farms were to be operated upon such principles that the inmates would be given employment and "every reasonable comfort," and would thus lose the "degrading sense of dependence." As the constitution made no provision for any other type of assistance, the General Assembly in 1818 enacted a law patterned very much after the poor law of the Northwest Territory. It enlarged its scope somewhat in care of the non-resident sick by making the overseers of the poor in the various townships responsible for providing care at the expense of the county. According to this act it was the duty of the overseer to give temporary relief to persons not citizens of the township who were sick, in distress, or without friends or money, and, in case of death, to pay funeral expenses.⁴¹

Attention was called above to the fact that Indiana at this period of its history retained an idea of a centralized governmental authority for the care of the unfortunate members of society and made several, at least two, appeals to the federal government for assistance. The Fifteenth General Assembly in 1830 sent a memorial⁴² to the United States Congress requesting that one section of land in each county of the state be granted for use in establishing asylums and poor farms for all persons found to be objects of charity; two sections for the benefit of the deaf and dumb of the state; and one section to be used to erect and maintain a lunatic asylum. Repudiating the idea of selfishness the General Assembly stated that their desire was only to assume the responsibility of acting as an agent to "administer consolation to all whom casualty or misadventure may render dependent on benevolent protection." They continued that further reason for asking for this grant was the fact that many of the persons in the state who needed assistance were newly arrived immi-

⁴⁰ Constitution, 1816, Art. IX, sec. 4.

⁴¹ *Indiana Laws* (1817-18), p. 162; *Revised Laws of Indiana* (1831), p. 385.

⁴² See above, *Special Laws* (1830-31), pp. 138-89; William A. Rawles, *Centralizing Tendencies in the Administration of Indiana* ("Columbia University Studies in History, Economics and Public Law"), XVII, No. 1 (1903), 148-49.

grants from other states who were unacclimated and succumbed quickly to disease. And care of the sick became a problem so difficult of solution to the state that in 1834 the General Assembly again sent a memorial to their senators and representatives in Congress, this time requesting that national hospitals be built in Indiana at convenient points on the Ohio River to accommodate the sick boatmen and others engaged in navigating the Ohio, as well as the sick inhabitants of Indiana.⁴³ They attributed the amount of sickness and death to the accidents on shipboard and to the effect of the hot sun on the cargoes of vegetable produce as the boats descended in summer and autumn from a higher to a lower latitude. The state was struggling with the old problem of local responsibility for relief. The poor, sparsely settled communities found themselves unable to cope with the tide of immigrants from other states and sought the help of the federal government in carrying a burden too great for them to handle.

The great amount of suffering caused by the hard times following the panic of 1837⁴⁴ necessitated further consideration of the needs of the people of the state. In 1838 there was a revision of the laws of the state, including the poor law. Under the new act the overseers were required to furnish medical aid for the poor who needed it by procuring "such physicians to attend them as the sick shall prefer."⁴⁵ If the sick expressed no preference, then the overseer must hire the best physician in the county, and in case his services could not be secured, then he must employ the next best. The state made an effort at that early date to see that their sick poor should be given the best medical care available, just as it sought, three quarters of a century later, to do the same thing through use of the state medical school and the university hospitals. When the laws were revised in 1843 the section regarding medical service was changed to read, "in case no preference is signified, the said overseers shall employ such best physician in the county as can be procured."⁴⁶

In 1851 the present constitution was adopted. It placed upon the

⁴³ *Indiana Local Laws* (1834-35), pp. 271-72 (see below, pp. 195, 196).

⁴⁴ Esarey, *op. cit.*, p. 492.

⁴⁵ *Revised Statutes* (1838), p. 433; see above, p. 38.

⁴⁶ *Indiana Revised Statutes* (1843), p. 357.

General Assembly the responsibility of providing institutions for treatment of the insane; for the education of the deaf and dumb, and of the blind;⁴⁷ and houses of refuge for the correction and reformation of juvenile offenders.⁴⁸ It gave to county boards the power to provide farms "as an asylum for those persons, who, by reason of age, infirmity or other misfortune, have claims upon the sympathies and aid of society."⁴⁹ The counties were given authority in 1852 to purchase land for a poor farm;⁵⁰ and so the system grew until every one of the ninety-two counties of the state established a poor farm. Under the present law each county must maintain a county asylum in addition to any other charitable institution permitted by law.⁵¹ The county farm was utilized for care of the sick poor who were citizens of the county. The county hospital is the outgrowth of this institution. One writer says of these county farms that they are "the indiscriminate gathering place of the wrecks and failures of humanity."⁵² In them were found "the insane, the feeble-minded, the epileptic, the deaf, the blind, the crippled, the shiftless, the vicious, respectable, homeless poor, and bright young children."⁵³ Long after a concerted effort had been made, with a large degree of success, to remove the handicapped, the mentally deficient, and the children from these conglomerate institutions, the use of them continued to be advocated as the only means available in rural communities⁵⁴ to care for those unfortunate beings whom sickness had reduced to a state of penury and dependency.

The law by which the overseers of the poor are authorized to employ physicians to minister to the needs of the poor was enacted in 1852⁵⁵ and given its present form in 1859.⁵⁶ It imposes upon the

⁴⁷ Constitution, 1851, Art. IX, sec. 197.

⁴⁸ *Ibid.*, sec. 198.

⁴⁹ *Ibid.*, sec. 199.

⁵⁰ *Revised Statutes* (1852), p. 401; in force May 6, 1853.

⁵¹ Burns (1926), § 12258.

⁵² *The Development of Public Charities and Corrections in Indiana, 1792-1910*, p. 118.

⁵³ See Kennedy, *op. cit.*, p. 25, for description of Ohio almshouse.

⁵⁴ Alexander Johnson, *The Almshouse* (1911), pp. 117-25.

⁵⁵ *Revised Statutes* (1852), p. 101.

⁵⁶ *Acts*, 1859, p. 35.

board of county commissioners the duty of contracting with one or more skilful physicians with a knowledge of surgery to care for prisoners in the county jail and "paupers" in the county asylum, and also of employing physicians to attend upon the poor generally in the county. It restricts medical service to that provided in accordance with such contract. The amendment of 1859 provides that this section of the law shall not be so construed as to prevent the overseers of the poor in townships not otherwise provided for from employing such medical or surgical service as the poor in their townships may need.⁵⁷ As a check upon possible abuses of the system of poor relief, county councils were created in 1899.⁵⁸ According to this law the board of county commissioners has no power to make any allowance for voluntary services or to pay for them out of the county treasury. They may not allow or cause to be paid out of the county treasury any money for the relief or support of any poor person not an inmate of some county institution. Nor do they have power to contract for the services of a physician for the poor except those who are inmates of a county institution.⁵⁹ Expenditures may be made from the county treasury for those purposes only by appropriations made by the county council and by warrants issued by the county auditor.⁶⁰

The legal provision made for care of the sick poor remained almost unchanged for fifty years. It was not until several years after the advent of the Board of State Charities in 1889 that any general attempt was made to establish state or county hospitals for the indigent. An effort was made in Indianapolis, the state capital, as early as 1858, by a doctor who was a member of the city council, to have the city build a public hospital. A small building was completed for that purpose but it was never used and rapidly fell into a state of disrepair and dilapidation. "No sick ever knocked at the weather-beaten door for admittance, and therefore, no provision was made for their reception."⁶¹ During the Civil War it was taken

⁵⁷ Burns (1926), § 6011.

⁵⁸ *Ibid.*, § 5862; *Acts* (1899), p. 343.

⁵⁹ Burns (1926), § 5894.

⁶⁰ *Ibid.*, § 5883.

⁶¹ Dr. Thad N. Stevens, *Transactions*, 1874, p. 17, cited in Kemper, *op. cit.*, pp. 71-72.

over by the military authorities, but after they were through with it it was again deserted.⁶² At the demand of the physicians of the city the city council finally promised to aid in furnishing and equipping it in the interest of the city's poor, and put their plan into action. Since 1867 it has been used to care for the sick poor of Indianapolis. It was even later, 1870, before there was anything resembling a medical dispensary in Indianapolis, with the exception of one or two private establishments which "took the name for the purpose of deception, and thereby making money, from the circulars of imposters, which were issued lauding their nostrums." A gift to the poor of the city from a prominent physician at his death was made the nucleus for the Bobbs' Free Dispensary, which was operated under the direction of the faculty of an independent medical college, which later became the state school of medicine.

RELATION OF SICKNESS TO POOR RELIEF

Such were the early efforts of the state of Indiana to care for its sick poor. Out of these beginnings grew the two methods still in use; from the one there developed the system of providing care in county or state institutions; from the other the system of furnishing medical service through administration of the poor fund by the township trustee. Under the latter system there was serious abuse of public funds. The trustee gave aid as he saw fit without supervision of any kind. "No record existed to indicate who were aided or why relief was given."⁶³ Sickness is one of the chief items of expense in dealing with the poor, and is one of the principal causes of destitution.⁶⁴

⁶² "... decay and silence again claimed it as their own; the roving swine and cattle passed to and fro through its dismantled gates, and it became an eyesore to the city" (*ibid.*).

⁶³ *The Development of Public Charities and Corrections*, p. 124.

⁶⁴ "Sickness is . . . admittedly one of the chief causes of pauperism; . . . We estimate that at least one-half of the total cost of pauperism is swallowed up in direct dealing with sickness. . . . It is probably little, if any, exaggeration to say that, to the extent to which we can eliminate or diminish sickness among the poor, we shall eliminate or diminish one-half the existing amount of pauperism" (*Great Britain, Report of Royal Commission on Poor Laws and Relief of Distress*, Vol. I, Part V, p. 289).

This has been generally true both in the United States⁶⁵ and in other countries, and Indiana is no exception to the general rule. Although state statistics available do not show the amount of expenditures from public funds for care of the sick, there are many indications pointing to the magnitude of the problem. The early history of Indiana reveals a constant struggle with disease and lack of adequate medical care. The appeals of the General Assembly to the United States Congress for aid for the destitute within the state indicate the prevalence of sickness. State legislation has shown an increasing awareness of the need of more adequate medical care. Although restrictions are placed upon expenditures by overseers of the poor for outdoor relief, they do not apply to burial, medical relief, or assistance to children under the compulsory education law.⁶⁶ The reports of the Supreme and Appellate courts abound in cases involving decisions on claims against county or township for medical services rendered.⁶⁷ Court decisions were usually in accordance with the principle that the county board must provide adequate medical attention for the poor. After the Board of State Charities began to assemble statistics on poor relief their figures showed that "sickness and burials" constituted the largest single item of causes for application for relief.⁶⁸ In 1915 there were some rural townships with a

⁶⁵ "In all countries, at all ages, it is sickness to which the greatest bulk of destitution is immediately due" (Sidney and Beatrice Webb, *The Prevention of Destitution* [1911], p. 15).

"In normal times illness constitutes the greatest single direct cause of dependency" (Abraham Epstein, *Insecurity* [1933], p. 411).

"For the United States the consensus of opinion from all responsible sources is that from 35 per cent to 50 per cent of the poverty which asks for relief is directly due to sickness" (*Report of Ohio Health and Old Age Insurance Commission* [1919], pp. 59-60, cited in Epstein, *op. cit.*, p. 409).

⁶⁶ Burns (1926), § 12266.

⁶⁷ The cases are much too numerous to attempt to list. A large proportion of the poor relief cases carried to the Supreme and Appellate courts of Indiana appear to be those which center around the problem of medical care. Further reference will be made to some of the most interesting decisions. For examples of early cases see, *Board v. Jones*, 7 Ind. 3 (1855); *Board v. Chitwood*, 8 Ind. 504 (1856); *Board v. Wright*, 22 Ind. 187 (1864); *Board v. Boynton*, 30 Ind. 359 (1868); *Board v. Harlan*, 108 Ind. 164 (1886).

⁶⁸ *Development of Public Charities and Corrections in Indiana*, pp. 126-27; *Annual Report, Board of State Charities* (1914), pp. 15-18.

"It appears from the trustees' reports that sickness is the most frequent cause for

large population where no relief other than medical aid had been given for years.⁶⁹ In 1933 the largest township of one of the counties made a study of its system of poor relief administration.⁷⁰ One of the main reasons for the survey was the large expenditure of funds for medical care. Care of the sick poor has ever been a problem of major importance in Indiana.

asking help. Of the reasons assigned for giving help in a total of 17,092 cases, sickness or burial was given 9,878 times. In addition to this, much medical relief is paid by contract and many trustees fail to report in the regular way the person so aided" (*ibid.*, p. 15).

⁶⁹ Amos Butler, *Official Outdoor Relief and the State* (No. 38, Reprints of Reports and Addresses of the National Conference of Charities and Correction, 1915 Meeting at Baltimore), p. 6.

⁷⁰ Center Township, Delaware County, "Report of Committee on the Study of Poor Relief and Its Expenditures" (unpublished), 1933.

CHAPTER III

RESOURCES FOR CARE OF THE SICK POOR

Since 1889 Indiana has had a Board of State Charities to investigate the whole system of public charities and correctional institutions of the state.¹ The governor, who is president ex officio of the board, appoints the six members for terms of three years each. It is a non-partisan board and the members serve without compensation, except actual traveling expenses. There have always been two women on the board. The duties of the board were originally purely supervisory, but from time to time the state legislature has added activities, some of which have a somewhat administrative character. The members of the board make their own rules and regulations of their proceedings and may require such reports and statistics from public institutions and welfare departments as they deem necessary. They, in turn, submit an annual report to the governor, with recommendations for changes and needed legislation, for the use of the legislature. Among the duties of the board are certain activities of special interest to the present discussion.

They examine into the condition and management of infirmaries, public hospitals, and asylums; secure accurate, uniform, and complete statistics;² examine and offer suggestions and criticism on plans

¹ *Acts* (1889), p. 51. See above, p. 44.

² "It is believed that no state in the Union has as complete information on file in a central office as is made available under the Indiana law. These reports have been accumulating in the office of the Board of State Charities for the past thirty-four years. They tell the story of poverty in Indiana as no other records can tell it, but the Board has never had sufficient funds for the necessary research. It has, however, compiled valuable statistics for all but two of the thirty-four years on the number of persons aided and the amount given them" (*Indiana Bulletin of Charities and Correction* No. 198 [October, 1931], p. 558).

"The statistical and record work is constantly increasing in volume. It is to be regretted that because of limited clerical help greater use can not be made of these records for research purposes. The material available would offer a rich field to students of sociology in our state universities and colleges" (*Forty-Second Annual Report of the Board of State Charities for the Fiscal Year Ending September 30, 1931*, in *ibid.*, No. 204 [May-June, 1932], p. 285).

for new poor asylums and the state sanatorium; approve plans for new county general hospitals; license approved maternity hospitals;³ co-operate with boards of county charities and correction⁴ in supervising county institutions; and receive quarterly reports of outdoor poor relief.⁵ The law gives the board no power to enforce its recommendations except in certain conditions in regard to the care of children and the operation of maternity hospitals. "The system is supervisory and advisory, working quietly and with a continuity of policy which makes for steady and permanent progress."⁶ With few exceptions all public activities concerned with supplying medical service to the indigent come under the supervision of the Board of State Charities.⁷

LEGAL PROVISIONS

By the provisions of its constitution and by legal enactments Indiana has established various resources for the care of the sick poor, financed by state, county, township, or municipal funds. For purposes of this discussion the resources may be divided into two general classifications—local care and state care. A brief review of local resources is given before examining more in detail the medical services supplied by the state.

³ Burns (1926), §§ 9889-9902.

⁴ Boards of county charities and correction were established in 1899 to visit county institutions and make quarterly reports to the Board of County Commissioners, and an annual report to the circuit judge, copies of their reports to be furnished to the newspapers and to the Board of State Charities (*Acts* [1899], p. 50). There were 64 boards of county charities in 1931 (*Annual Report of Board of State Charities for 1931*, p. 271).

⁵ Burns (1926), § 12275.

⁶ *Annual Report of Board of State Charities for 1931*, pp. 254-56.

⁷ During the 1933 session of the legislature there was created the "Governor's Commission on Unemployment Relief" (*Acts* [1933], p. 759), to whom was assigned the duty of adopting and executing measures to relieve the unemployed. The number of the members of the commission was left to the discretion of the governor. They serve without pay and at the pleasure of the governor. The commission was empowered to investigate the conduct of township trustees as overseers of the poor and to report any failure in performance of duty to the governor, who might, after a hearing for the trustee, remove such trustee from office. The investigators, whom the trustees are authorized to employ under the new law, and to pay from the poor fund, must conform to qualifications specified by the Governor's Commission on Unemployment Relief (*Acts* [1933] p. 822). It may be that supervision of medical care furnished by the township trustees will now come under this commission. See below, p. 359, for list of statutes.

Under local auspices there is the practice, already referred to, of paying a physician from the township poor fund to minister to the needs of the poor. Hospital care may be supplied by means of county,⁸ township,⁹ municipal,¹⁰ or municipal and county,¹¹ aid to private general hospitals not operated for profit. The subsidizing of private hospitals with public funds is little used in Indiana. Subsidies from state funds are in fact forbidden by the constitution.¹²

In February, 1933, there was only one private hospital receiving a county subsidy. The plan has not been popular with the privately owned hospitals.¹³ Only one general hospital in the state receives a township appropriation.¹⁴ Private hospitals in five cities receive some aid from city funds.¹⁵ According to information available no hospital is subsidized by municipal and county aid combined. There are four general hospitals owned and operated by municipalities;¹⁶ twenty-five county general hospitals;¹⁷ and seven county tuberculosis hospitals.¹⁸ The cost of care for indigent patients in a county general hospital or a private hospital is paid by the township trustee out of the poor fund; the rate of charges is fixed by the hospital.¹⁹ The remainder of the ninety-two counties must depend upon the Indiana University Hospitals, the employment of private physicians through the poor fund, and the county poor farms to supply medical care for the indigent.

Through the State Board of Health and the local health boards

⁸ Burns (1926), § 4375.

¹⁰ *Ibid.* (1926), § 11068.

⁹ *Ibid.* (Supp. 1929), § 5364.

¹¹ *Ibid.*, §§ 11069-70.

¹² Constitution, Art. IV, sec. 125; Art. X, sec. 202.

¹³ "From the information given us for the calendar year 1932 we find only one private hospital, the Grant County (association) Hospital, Marion, Indiana, receiving a county subsidy of \$6,000" (quotation from letter from secretary of the Board of State Charities, dated February 20, 1933, addressed to the writer).

¹⁴ "The Reid Memorial Hospital, Richmond, is the only general hospital in the state receiving a direct township appropriation. The law providing for township aid to private institutions refers to this institution alone" (*ibid.*).

¹⁵ "We do not receive reports of city appropriations to association owned general hospitals but it is our understanding that a few the past several years, the Ball Memorial, Muncie, the Elkhart General Hospital, Elkhart, the Goshen Hospital, Goshen, the Home Hospital and St. Elizabeth Hospitals, Lafayette, and the Fayette Memorial Hospital, Connersville have received some aid through city funds." (*ibid.*).

¹⁶ *Ibid.* ¹⁷ *Annual Report, Board of State Charities, 1931*, p. 379. ¹⁸ *Ibid.*, p. 380.

¹⁹ Burns (1926), § 4375, 4397, 11065.

antitoxin and anti-rabic serum are supplied, in cases of diphtheria, scarlet fever, tetanus, and hydrophobia, free of charge to people too poor to purchase them.²⁰ It cannot be legally paid for from the township poor fund but is an expense of the county, city, or town board of health. The State Board of Health also is authorized to furnish free treatment to persons infected with hydrophobia, and to pay traveling expenses and maintenance of the mother or nurse who accompanies a child brought for such treatment.²¹ In cases of poor persons placed under quarantine by the board of health all expenses of quarantine, disinfecting, and any measures deemed necessary to curb the disease and protect the public health are paid for by the board of health, but the cost of medical care, food, clothing, and nursing for which the persons are unable to pay, is assumed by the overseer of the poor unless they are cared for in an isolation hospital provided by the board of health.²²

Treatment for a tuberculous patient may be obtained in a county tuberculosis hospital, but care is furnished also by the state in the Indiana State Sanatorium.²³ In the latter case the county pays not more than \$5.00 a week per patient and the state pays the remainder of the cost. Traveling expenses to and from the sanatorium are paid from the township poor fund.

State care for the sick poor is furnished by the state also at the three hospitals known as the Indiana University Hospitals. The overseers of the poor are encouraged to use these hospitals when hospital care is needed.²⁴ The Robert W. Long Hospital is a general hospital and gives free medical service to the sick poor at the expense of the state. Care also at state expense is furnished for women at the William H. Coleman Hospital for Women.²⁵ The overseer pays the

²⁰ *Ibid.* (Supp. 1929), § 8192.

²¹ *Ibid.* (1926), §§ 9197-98.

²² *Ibid.* (1926), §§ 8179-82; see also *Board of Commissioners of Pike County v. Kime*, 66 Ind. App. 620; 118 N.S. 595 (1918).

²³ Burns (Supp. 1929), § 4255.

²⁴ "If hospital care is needed, the overseer should endeavor to have the patient received at Indiana University Hospitals, Indianapolis, where hospital care is free to the poor" (*Indiana Bulletin of Charities and Correction* [October, 1931], p. 545).

²⁵ "Under rules established by the trustees of the University, patients are received at Long and Coleman Hospitals on application to the administrator" (*Annual Report, Board of State Charities, 1931*, p. 316).

traveling expenses to and from the hospitals, and also in some instances pays the charges for special drugs and medical appliances. The James Whitcomb Riley Hospital for Children offers facilities for care of children under sixteen years of age. The cost of care and treatment and of traveling expenses for the child and an attendant are all paid by the county if the parents are unable to bear the expense.²⁶

From this brief summary of resources available for medical care it will be seen that the expense is usually borne by the township trustee. Some institutional care is provided by the county, but as a rule the county is reimbursed by the trustee. State hospital care is furnished at the expense of the state or county or both; only traveling expenses and charges for special drugs and medical appliances are paid by the trustee in these cases. This is itself an inducement to use the facilities of the state for medical care. In Table I are shown the various resources for care of the sick poor by state, county, and township governmental units.

THE COUNTY SYSTEM

Although each township must pay for the aid given its needy citizens outside of an institution, and often also for care within its walls, the system was early held²⁷ to be a county system and is still so

²⁶ Burns (1926), § 7152.

²⁷ In 1864, when the county failed to provide medical care for two bona fide residents who, sick with smallpox, became a temporary charge as paupers upon the county, the township trustee employed a physician to attend them; the county board of commissioners disallowed the bill for the services of the physician. Action brought by the doctor to recover the fee for his work was carried to the Supreme Court of Indiana. The decision rendered by the court made two pronouncements concerning the intent of the poor laws and the poor law system of Indiana. "... That question is, whether a resident of a township, who may become temporarily, as in this case by smallpox, a charge upon the public, must be taken to, and furnished with the needful help by those employed at the county asylum. . . . We are, upon the whole, inclined to the opinion that it was not the intention of the framers of these statutes that residents requiring mere temporary relief, should necessarily be removed, before receiving the same, to the asylum. . . . It is the obvious general purpose of the poor laws of this State to make the mode of giving relief to paupers a county system and not a township system, and to make the township trustee subordinate to the county commissioners" (*Board of Commissioners of Bartholomew County v. Wright*, 22 Ind. 187 [1864]). See above, p. 69, also below, p. 224.

TABLE I
VARIOUS RESOURCES FOR CARE OF THE SICK POOR, SHOWING TYPE OF CARE,
RESPONSIBILITY FOR CARE, AND RESPONSIBILITY FOR EXPENSE

Resources	State Care	County Care	Township Care	State Expense	County Expense	Township Expense
Robert W. Long Hospital	Hospital- ization	.....	.....	Treat- ment	.....	Travel, drugs, appli- ances
William H. Coleman Hos- pital	Hospital- ization	.....	.....	Treat- ment	.....	Travel, drugs, appli- ances
James Whit- comb Riley Hospital	Hospital- ization	.....	.....	.....	Treatment and travel	.....
State Sana- torium	Hospital- ization	.....	.....	Treat- ment— partial	Treatment —partial	Travel
County General Hospital	.....	Hospital- ization	.....	.....	.....	Treatment
County T.B. Hospital	.....	Hospital- ization	.....	.....	Treatment	.....
County Poor Asylum	.....	Medical care	.....	.....	Medical care	.....
Private hospital	.....	.....	Hospital- ization	.....	.....	Treatment
Private physi- cian	.....	.....	Medical care and nursing	.....	.....	Medical care and nursing
Medical sup- plies	.....	.....	Drugs and appli- ances	.....	.....	Drugs and appli- ances
Quarantine	.....	Preventive and pro- tective*	Home med- ical care	.....	Hospital, disinfect- ant, etc.*	Doctor, nurse, medicine
Scarlet fever, diphtheria, tetanus, anti- rabid serum	.....	Treatment, supplies*	.....	.....	Supplies of serum and anti- toxins*	.....
Hydrophobia	Treat- ment and travel†	.....	.....	Treat- ment and travel†	.....	.....

* City or county board of health.

† State Board of Health.

considered.²⁸ The county is responsible for care of the poor and the township trustee as overseer of the poor acts as the agent for the county.

It should be noted that the practice of furnishing medical care through payment of the private doctor has always been fraught with difficulties and controversies. Although the state sought by law to safeguard the employment of a skilled physician it was not always successful, to which fact the court records bear ample testimony. The question arises, must the poor submit in silence to the unskilful services of a physician incompetent to treat the sick, simply because they are poor; if such incompetent physician injures his indigent patient, is the county liable for the injury? Both of these questions bearing on the important matter of the quality of medical care which the sick poor receive have been ruled upon in the Indiana courts. The question of liability of the county came before the court in 1885. A woman fell and broke her leg, but was too poor to employ a surgeon to attend her. The doctor hired by the county to attend those too poor to pay a private physician was sent to take care of her injuries. It was averred that at the time he was employed by the county he was not a skilful physician having a knowledge of surgery, but, "on the contrary was unskilful in the profession, and had no knowledge of surgery, and was incompetent to intelligently perform the duties of a physician and surgeon." It was pointed out that his want of skill and knowledge resulted in great injury being done the patient, who sued the county for damages. The court ruled that if in any case a recovery could be had against the county for the unskilful treatment of a poor person there could be none in this case as it did not appear that the commissioners did not "exercise care and diligence in the selection of a physician." In the opinion of the court, "where care and diligence are used in the selection of a physician, the officers representing the county have done their duty, and where there is no breach of duty there can be no negligence. Mere errors in judgment do not constitute negligence. . . . Public corporations, to

²⁸ In 1895 the court reaffirmed the decision that "the plan provided by law for caring for the poor is a county system, and the township trustees act on behalf of the county in executing such laws" (*Kerlin v. Reynolds*, 142 Ind. 460, 36 N.E. 693, 41 N.E. 827 [1895]).

whose officers governmental powers are delegated, are not responsible for the negligence of their officers in the exercise of these governmental powers."²⁹

More humane in the viewpoint expressed was a court decision rendered in 1892. In this case the township trustee had called in a skilled surgeon to tend a poor man with a seriously infected leg. The doctor employed by the county was an inexperienced practitioner who had finished his medical training only four months previously and had no experience in surgery. The patient's life depended upon immediate operation but the county's doctor refused to operate because of his lack of knowledge and experience, and because he lived too far, 15 miles, away from the patient to give him the proper after-care. In the emergency the township trustee called upon the surgeon, who saved the patient's life. The county repudiated the fee for the surgeon's services and the doctor filed suit to recover his charges. Both the lower court and the appellate court ruled in favor of the doctor. The court in its decision said that even though the county commissioners, in accordance with the law, have appointed a physician to look after the poor of a township, "yet where such physician lacks the skill necessary to perform a difficult surgical operation on a pauper in a critical condition, whose life depends on the result, the township trustee, who is constituted overseer of the poor of his township . . . may employ a skilled surgeon to perform the operation, and the county is liable for the services of such surgeon." The court took occasion to express what it considered to be the spirit of the law.

"Paupers, by reason of their unfortunate condition do not, when suffering from disease, become the subjects for experiment and practice upon the part of tyros in medicine and surgery. The law is more generous than this. . . . There is no good reason why counties, as public corporations, should not faithfully discharge the obligations imposed upon them, as well as individuals. When they employ incompetent persons to perform important services they do not do their duty. A failure upon their part to do their duty does not justify them in refusing to recognize those who do."³⁰

²⁹ *Summers v. Board of Commissioners of Davies County*, 103 Ind. 262, 2 N.E. 725 (1885). See below, p. 266.

³⁰ *Board of Commissioners of Perry County v. Lomax*, 5 Ind. App. 567, 32 N.E. 800 (1892). See below, p. 288.

Perhaps the judgment of the township trustee as to the competency of the doctor was faulty; perhaps the community afforded recourse to no doctor of sufficient skill for the service required; and perhaps partisan politics and personal patronage influenced the trustee's selection of doctors. All three factors have influenced this service to such a degree as to make the practice a generally unsatisfactory one.

The custom of caring for the sick poor in county asylums has continued in spite of the increased facilities offered in county and state hospitals. The total number of inmates of the poor farms has increased from 3,365 in 1922 to 4,156 in 1929, and 5,151 in 1931. Dur-

TABLE II
TOTAL POPULATION OF POOR ASYLUMS AND NUMBER CLASSIFIED AS
SICK FROM 1922 TO 1931, INCLUSIVE

Year	1931	1930	1929	1928	1927	1926	1925	1924	1923	1922
Total population...	5,151	4,724	4,156	3,969	3,671	3,535	3,433	3,301	3,294	3,365
Number of sick.....	827	904	767	696	572	569	340	677	341	562

ing the same ten-year period the number of sick cared for has increased from 562 in 1922 to 767 in 1929, 904 in 1930, and 827 in 1931. From Table II, in which are presented the figures showing the total population and the number classified as "sick" from 1922 to 1931, it appears that the number of sick in the county asylums varied during the last ten years from approximately one-fifth to one-sixth of the total number of inmates.³¹ Unfortunately, the reports on the asylum population give no information as to how many of those classified as sick were removed there because of illness and how many were taken sick after admission. As a large proportion of the inmates are over sixty years of age it is probable that many of the sick were already receiving domiciliary care, but in view of the lack of resources for the care of chronic illness, and of the recommendations of the state officials that provision be made to receive the

³¹ Statistics for county asylums are taken from *Annual Report, Board of State Charities, 1922-31*, inclusive.

indigent sick, it seems likely that a number of this group were admitted for that reason.

Medical care for the inmates of the poor farms is reported as being prompt and efficient in all of these institutions with few exceptions.³² In a majority of them medical service is available on call, and also regularly once a week. Facilities for some form of hospital and nursing service have been provided in most of the modern institutions. A few of the larger ones have good hospital units with trained nursing service; some have rooms set aside for hospital use; some have simple equipment and the service of a practical nurse. There are still a number of the asylums which have "no hospital room, no equipment, no registered or practical nurse, and these are in great need of such services. Medical attention is especially essential as the inmates over sixty years of age account for more than 66 per cent of the total population of these institutions."³³

The administration of the poor asylums is vested in the county commissioners, who prescribe rules and regulations, and, with the advice and assistance of the superintendent, regulate the number and fix the compensation of the matrons and other employees. The commissioners appoint the superintendent whose only qualifications are that he must be a reputable citizen of good moral character, have a kind and humane disposition, and good executive ability; have had a good common school education, and that he be a skilled and experienced farmer.³⁴ Any poor person who has had a year's uninterrupted residence in the county or township is entitled to permanent care.³⁵ Under certain circumstances non-residents may be admitted for temporary care if it seems advisable to the overseer of the poor.³⁶ An idea of the dissatisfaction with the system is given in the report of the Board of State Charities for 1931.

Unfortunately, there are still a few asylums which are a disgrace to their counties and to the state. As we have heretofore pointed out, the immediate need is a system of non-partisan management, similar to that of the county hospitals, to the end that managers may be employed, retained or replaced with

³² *Annual Report, Board of State Charities, 1931*, pp. 383-84.

³³ *Ibid.*, p. 391. The percentage of people over sixty years of age was 59.61 per cent in 1921 and 51.71 per cent in 1911. See *Annual Report, Board of State Charities for 1921* and for 1911.

³⁴ Burns (1926), § 12299.

³⁵ *Ibid.*, § 12259.

³⁶ *Ibid.*, §§ 12278-23.

reference only to their fitness for the work to be done, instead of their political affiliations. Some of the less populous counties might well consider closing their asylums and joining with contiguous counties in the maintenance of such an institution.³⁷

The vicious influence of politics is revealed in the board's recommendations for needed legislation:

... The county asylums are controlled by the respective boards of county commissioners who are for the most part firmly intrenched in partisan politics, the influence of which affect the asylums adversely. County general hospitals and county tuberculosis hospitals are managed by non-partisan boards of trustees and are maintained at high standards. We recommend enactment of a law which will place the county poor asylums under a similar system of management.³⁸

It has been pointed out that the county hospital has been less subject to the whims and abuses of partisan politics than the poor farms. In 1931 twenty-five counties had county general hospitals and seven had county tuberculosis hospitals. The combined bed-capacity of the two types of hospitals in the state is approximately 2,125; of this number the general hospitals have a capacity around 1,129 and the tuberculosis hospitals about 996.³⁹ Some of the county general hospitals also receive tuberculous patients, and some have established out-patient clinics. This latter development might well be emulated by other counties.

The great majority of the general hospitals have been built since 1917, when the present law⁴⁰ was enacted⁴¹ providing for a referendum vote on petition of two hundred resident freeholders of the county desiring a hospital. Plans and specifications must be approved by the Board of State Charities. Under the amendment of 1929⁴² if a county wishes to establish a hospital an election may be held or a petition may be presented to the county commissioners signed by 30 per cent of the resident freehold citizens of the county, together with not less than 50 freehold citizens of each township of the county. The management of the hospital is vested in a board of

³⁷ *Annual Report, Board of State Charities, 1931*, p. 272.

³⁸ *Ibid.*, pp. 283-84.

³⁹ *Ibid.*, p. 273.

⁴⁰ Burns (1926), §§ 4363-99.

⁴¹ *Acts* (1917), p. 527.

⁴² *Ibid.* (1929), p. 13.

four trustees, two of whom may be women. The board is appointed by the county commissioners, one each year for a term of four years, but not more than two may be of the same political belief. Practicing physicians are not eligible for membership on the board. The superintendent is appointed by the board, who also fixes the salaries of all employees. The hospitals are established not only for the benefit of the inhabitants of the county but also for any person who falls sick or is injured within its limits; the facilities of the hospitals may be extended to non-residents at the discretion of the board. The hospital is not restricted to use for the indigent but is open also to pay patients, who are charged a "reasonable compensation" in accordance with the rules and regulations of the board which, however, must be such as will render the hospital of "greatest benefit to the greatest number." All legal physicians have equal privileges in treating patients in the hospital. The patient has a right to employ his or her own physician at his or her own expense, in which case such physician has exclusive care and treatment of the patient, always subject to the general regulations of the board. The cost of care for the poor is, as mentioned above, paid by the township trustee of the township of which the patient is a resident.

These county hospitals are small institutions, most of them having a capacity of from twenty-five to fifty beds. Four of them have a capacity of sixty, and one, of a hundred beds.⁴³ They have been the solution of the problem of hospital care in counties with a population of from 13,000 to 35,000 inhabitants—in one case 41,000 inhabitants—in each of which is located a small city or town.⁴⁴

The county tuberculosis hospitals, on the other hand, have been erected in more populous counties, often near the larger cities. They vary in size from a bed capacity of thirty-five to two hundred and fifty beds. Their facilities are usually open to, and much used by, patients from other counties.

According to the law authorizing county tuberculosis hospitals⁴⁵ the county commissioners may vote to establish such a hospital, and must establish one upon a favorable referendum vote of the people

⁴³ *Annual Report, Board of State Charities, 1931*, pp. 378-80.

⁴⁴ *United States Census: Population, 1930*, I, 334-49.

⁴⁵ Burns (1926), §§ 4400-4417.

following a petition signed by two hundred resident freeholders of the county. The commissioners appoint the board of managers, at least two of whom must be practicing physicians. The board of managers appoints the superintendent, who must be a graduate of an incorporated medical school; fixes the salary of all employees; and has general control of the hospital. The plans and specifications for the hospital must be approved by the State Board of Health. The charge for hospital care is set by the board of managers.

Any person who has been a resident of the county for a year and is suffering from tuberculosis is eligible for admission. The commissioners of a county which has no tuberculosis hospital may contract with a county which has one, to care for non-resident indigent patients; or two or more counties may join together for the establishment and maintenance of such a hospital. The cost of care and treatment for the indigent or "partially indigent" is borne by the county in which they reside. Thus the expense of care for tuberculosis patients in the state who are unable to pay for treatment has become a charge upon the county or the state and is no longer borne by the overseers of the poor.

The task of providing adequate care is a difficult one at best; and under an antiquated system, those difficulties are increased. An illustration of those difficulties may be found in the conditions existing in Delaware County which are selected for presentation not because they necessarily represent conditions existing in all parts of the state but because they reveal the difficulties experienced by one community in attempting to provide adequate medical care under an antiquated system.

In 1930 Delaware County had a population of 67,270 inhabitants, of which 46,548 were in the city of Muncie. The county is composed of twelve townships. Of the county's inhabitants, 48,933 live in Center Township, in which Muncie is located, and the remaining 18,337 reside in the other eleven townships.⁴⁶ Most of the social work in the county is done in Center Township, which alone has any professional social workers to handle its social problems. Figures are presented here for all of Delaware County for 1931 and 1932, but

⁴⁶ *United States Census: Population, 1930*, I, 337.

the more detailed account of the problem is for Center Township only.⁴⁷

In 1931 and 1932 the expense of medical care was 21.9 per cent and 18.0 per cent, respectively, of the poor relief expenditure of Delaware County. In 1931 the percentage was 20.5 for Center Township as against 39.7 for all other townships; and in 1932, 17.0 per cent for Center Township and 31.8 per cent for all other townships. Of the total expenditure of \$171,344.30 in 1931, Center Township spent \$158,503.58, and all other townships \$12,840.72. The figures for 1932 were \$314,698.95 for total relief, of which \$293,036.26 was expended in Center Township and the remaining \$21,662.69 in all other townships. These figures show that approximately 85 per cent of the relief was spent in the township containing about 75 per cent of the population of the county. It is of interest that in Center Township the \$32,360.09 spent for medical care in 1931 was 20.5 per cent of the total relief for the township, and the \$49,823.91 spent in 1932 was 17 per cent of the total, while in all other townships in 1931 medical care amounted to \$5,104.88, or 39.7 per cent of the total for the eleven townships, and in 1932 to \$6,900.81, or 31.8 per cent of all relief.

The expense of medical care is divided into four items—doctors, dentists, medical supplies, and hospitals. As might well be expected, the largest items are for doctors and hospitals. In Center Township in 1931 payment of doctors was 7.0 per cent of their relief expenditures and hospital care 12.8 per cent; 0.4 per cent covered the charges for dentists and 0.3 per cent for medical supplies. In the same year the other townships paid 28.9 per cent of their total relief for doctors and 10.4 per cent for hospitalization; no money was expended for

⁴⁷ Acknowledgment is made to the director of the Social Service Bureau and the secretary of the Community Fund for the material for this study. Figures for Delaware County were compiled January 12, 1933, by the Research and Budget Committee, Delaware County Association for Tax Reduction. The information for Center Township is contained in the unpublished report of the committee appointed at a joint meeting of the directors of the Community Fund and the relief agencies to study the problem of relief of distress in Center Township. The report was made available to the writer for use in the present study. Supplementary information was obtained from interviews with the director of the Social Service Bureau, the township trustee, and members of the Citizens' Advisory Committee on Medical Care.

dentists, and only 0.4 per cent for medical supplies. In 1932 the costs were 8.9 per cent for doctors, 7.6 per cent for hospital care, 0.4 per cent for dentists, and 0.1 per cent for medical supplies in Center Township, and in the other townships, 17.2 per cent for doctors, 14.2 per cent for hospital care, 0.2 per cent for dentists, and 0.2 per cent

TABLE III

EXPENDITURES FOR MEDICAL RELIEF AND TOTAL POOR RELIEF IN DELAWARE COUNTY IN 1931 AND 1932, DIVIDED ACCORDING TO EXPENDITURES IN CENTER TOWNSHIP AND ALL OTHER TOWNSHIPS

ITEMS OF RELIEF	1931		1932	
	Cost	Per Cent	Cost	Per Cent
Center Township:				
Doctors.....	\$ 11,036.05	7.0	\$ 26,021.74	8.9
Dentists.....	577.30	.4	1,140.30	.4
Medical supplies.....	413.39	.3	310.60	.1
Hospital.....	20,333.35	12.8	22,351.27	7.6
Total medical care.....	\$ 32,360.09	20.5	\$ 49,823.91	17.0
Total relief.....	\$158,503.58	100.0	\$293,036.26	100.0
All other townships:				
Doctors.....	\$ 3,716.75	28.9	\$ 3,745.85	17.2
Dentists.....			39.00	.2
Medical supplies.....	50.28	.4	45.11	.2
Hospitals.....	1,337.85	10.4	3,070.85	14.2
Total medical care.....	\$ 5,104.88	39.7	\$ 6,900.81	31.8
Total relief.....	\$ 12,840.72	100.0	\$ 21,662.69	100.0
Total medical care, Delaware County.....	\$ 37,464.97	21.9	\$ 56,724.72	18.0
Total relief, Delaware County	\$171,344.30	100.0	\$314,698.95	100.0

for medical supplies. Unfortunately, the report gives no information regarding what hospitals were used. In Table III are presented the figures for medical relief and for total relief in Delaware County in 1931 and 1932.

Center Township alone in Delaware County has private social organizations which supplement the work of the public agency. The Social Service Bureau, which is financed by the Community Fund,

makes the investigations for the trustee's office and furnishes supplemental and special relief which is not provided by the trustee. Practically all regular relief is given from the township poor fund; no applicants are accepted by the trustee without the investigation and approval of the Social Service Bureau. There are three social workers in the Bureau to investigate the new cases and "follow up" 2,100 old ones; the Bureau states that their "follow-up" is utterly inadequate, as all they are able to do is to make a "door-step" call on each family once in about every seven or eight weeks.

The private agencies gave supplementary medical service which amounted to \$8,125.90 in 1931, making a total of \$40,485.99 for medical care in the township, and \$7,053.20 in 1932, making the total \$56,877.11. The private agencies expended \$7,465.38 in 1931 and \$4,777.58 in 1932 for nursing care.

Physicians are paid fifty cents for office calls and \$1.00 for home calls. That the system appears to be subject to abuse is evidenced by the fact that one doctor had 30 home calls and 180 office calls, while another had 192 home calls and 42 office calls. The patient has a choice of doctors but if no preference is specified the township trustee makes a selection. The social service follow-up is inadequate to investigate cases to see if continued medical service is necessary, and there is no check to prevent a doctor from continuing unnecessary medical attention to a patient if he so desires. During the last quarter of 1932, thirty-six doctors gave medical service to 818 families at a cost of \$8,057.13. Of the thirty-six doctors employed, four received 40 per cent of the business and eight received 35 per cent, leaving the remaining 25 per cent to be distributed among the other twenty-four physicians.

The Ball Memorial Hospital in Muncie is used for most of the hospital cases and allows a discount to the township which varies from 10 per cent on room rent to 60 per cent on anesthetics. In the last quarter of 1932 the township paid \$5,189.72 to the hospital for the care of eighty-one patients. Little use is made of the Indiana University Hospitals. During 1931 they sent only fifty-five patients there, although Indianapolis, where these hospitals are located, is within sixty miles of Muncie. There is no objection to the use of the Coleman and Long hospitals, where medical care is free to the indigent,

but the long waiting list at the hospitals means that patients must wait, sometimes for weeks, before being admitted. Consequently, the township sends only cases for whom there is no emergency and whose condition probably entails long-time care. The Social Service Bureau would gladly make greater use of the Riley Hospital for Children because of the better facilities for expert treatment, but the local doctors prefer to have the township funds spent for care in the local hospital, and the judge from whom the order for hospitalization must be obtained follows the advice of the doctors. They make their greatest use of Riley Hospital by taking children for out-patient care at that hospital in order to benefit from the specialized service.

In its report in February, 1933, the Committee to Study the Relief of Distress in Center Township recommended that an out-patient clinic be established at Ball Memorial Hospital for ambulatory patients, and that the present system of employing physicians be retained for home calls, but that the doctors be required to keep more adequate records of diagnosis and treatment; that the staff of the Social Service Bureau be augmented if necessary, in order to gather more detailed and exact information concerning patients; and that an effort be made to secure revision by the General Assembly of 1933 of the laws relating to poor relief and its financing. Concerning the whole Indiana system of poor relief, it said, "The present laws governing the administration of poor relief are largely three quarters of a century old and need modernizing." After this report was received an effort was made, with the co-operation of the hospital and several doctors of the community, to establish the desired out-patient department, but adverse influence was strong enough to defeat the effort, and the old system still continues.

STATE BOARD OF HEALTH

In a state where the health problem was as great as it was in Indiana the need of a state board of health would appear to be obvious, but the development of effective control of disease has been slow. As early as 1849 at a meeting of the "State Medical Convention" in Indianapolis a resolution was passed by these early physicians that a committee of five be appointed "to memorialize the Legislature asking them to provide by law for a registration of mar-

riages, births, and deaths."⁴⁸ At a session of the State Medical Society in 1853 a committee on vital statistics made a report urging the adoption of legal enactments requiring the registration of marriages, births, and deaths.⁴⁹ A state board of health was finally created in 1881.⁵⁰ Indiana was admitted in 1900 to the Registration Area of the United States Census for the registration of deaths, and in 1917 for the registration of births.⁵¹

As to the effectiveness of the board, it may be noted that although local health officers are provided for by the law,⁵² the system has always been handicapped by the fact that the salary of the county health officer is restricted to 1½ cents per capita of the population of the county, and that of the city health officer to 2 cents per capita of the city population. In case the office of city and county health officer is combined the officer may be paid at the rate of 2 cents per capita. In no case may the salary exceed \$1,500 a year.⁵³ As a result, the local health departments are mostly poorly manned and ineffective.⁵⁴ There are no qualifications specified for the members of the State Board of Health, but the secretary of the Board, who is also the chief health officer, must be an "able-bodied, licensed physician, of good moral character, experienced in hygiene and sanitation."⁵⁵ The same qualifications are required of local health officers, but the legislators must have suspected that the position would not attract competent physicians, for the law naïvely states, "Provided, That in towns, if no licensed physician will serve as town health officer, then any respectable or moral person may be appointed."⁵⁶

⁴⁸ *Proceedings of the State Medical Convention of Indiana, Held at Indianapolis, June, 1849* (Indianapolis: John D. Defrees, 1849). Cited in G. W. H. Kemper, *A Medical History of Indiana*, pp. 144, 149.

⁴⁹ *Transactions* (1853), p. 74, cited in *ibid.*, p. 362.

⁵⁰ *Laws* (1881), p. 37.

⁵¹ *Health Departments of States and Provinces of the United States and Canada*, Public Health Bulletin, No. 184 (1929), p. 243.

⁵² Burns (1926), § 8158.

⁵³ *Ibid.*, § 8159.

⁵⁴ "As a consequence, Indiana is one of the few states without any full-time county health officers and health work is perhaps much more limited than it might otherwise be." Allon Peebles, *A Survey of the Medical Facilities of Shelby County, Indiana* [1929], p. 117.

⁵⁵ Burns (1926), § 8120.

⁵⁶ *Ibid.*, § 8160.

The control of communicable diseases is ineffective and the reporting inaccurate.⁵⁷ In 1931 there were six outbreaks of diphtheria, six of scarlet fever, five of smallpox, and six of typhoid fever. In 1931 the number of cases of scarlet fever reached the alarming number of 8,994 and diphtheria 1,655. Typhoid fever cases amounted to 355, but smallpox declined from 6,131 cases in 1930 to 3,503.⁵⁸ Vaccination of school children for smallpox is not compulsory, and only a small percentage of children are immunized for either smallpox or diphtheria. The department for control of venereal disease is in the division of communicable diseases and carries on a big educational program against venereal disease and also operates a number of clinics for treatment. Further mention of this activity will be made later.

The largest and perhaps the most active department of the State Board of Health is the Division of Infant and Child Hygiene. It has a staff of field workers, physicians, nurses, and speakers who carry on a state-wide program of examination, inspection, and education in the field of child welfare. They took advantage of the federal maternity and infancy act in 1922,⁵⁹ and co-operated with the White House Conference on Child Health and Protection in 1930.⁶⁰

The Board of Health has long been aware of its own ineffectiveness due to the unavoidable restrictions imposed by lack of sufficient funds. In 1900 a bulletin issued by the Indiana Board of Health pointed out the important results of persistent teaching of sanitary living by contrasting the comparative death-rates for Michigan and Indiana to the discredit of Indiana.⁶¹ It called attention to the

⁵⁷ See *Annual Report of the State Board of Health of the State of Indiana for the Fiscal Year Ending September 30, 1931*, pp. 11, 123-30; and also Peebles, *op. cit.*, pp. 124-27.

⁵⁸ *Annual Report, State Board of Health, 1931*, pp. 124-25.

⁵⁹ "In July, 1922, when the Federal maternity and infancy act was accepted by the governor, the remainder of the appropriation for the fiscal year was then matched with Federal funds. The record of the work accomplished before and after the Federal aid became available indicates that the so-called Sheppard-Towner law has been of real assistance in improving conditions affecting the health of mothers and babies" (*Health Departments of States and Provinces of the United States and Canada* [1929], p. 246). See also Burns (1926), §§ 8154-56.

⁶⁰ *Annual Report, State Board of Health, 1931*, pp. 78-112.

⁶¹ *Evening Post* notice, copied in *Charities*, IV, No. 18 (March 31, 1900), p. 8.

marked difference, in favor of Michigan, between the death-rates in the two states in the matter of three preventable diseases—"pulmonary consumption," typhoid fever, and diphtheria.⁶² The bulletin attributed the difference principally to better sanitary conditions in Michigan brought about by "almost twenty years of excellent sanitary teachings by the Michigan Board of Health." The Indiana Board of Health lamented the fact that it was not permitted to print sanitary circulars in excess of 5,000 to reach a population of 2,650,000, which could make only a feeble impression on health conditions in the state. Protection of the public health is still hampered by lack of funds for the effective operation of its health boards, both state and local, but there is a persistent effort to have enacted a new public health law which will permit the development of a more effective program.

SERVICES FOR THE SICK POOR

Mention has already been made of certain special services of the Board of Health for the sick poor, namely, the supply of diphtheria, scarlet fever, and tetanus antitoxins, and anti-rabic serum, at the expense of city or county health boards; and of Pasteur treatment for hydrophobia at the expense of the State Board. The supplies given by the local boards are issued by means of a standard blank form made out by a physician testifying to the applicant's indigence and need of the antitoxin or serum. The order is authorized by the city or county health officer and filled at a local drug store, or some local source of supply.⁶³ The Pasteur treatment is furnished at the state laboratory at Indianapolis through application to the local health officer. Treatment for the patient, and traveling expenses and maintenance, both for patient and attendant, if the patient is a child, are paid by the State Board of Health. In the matter of quarantine of indigent persons a definite distinction is made between the part of the expense borne by the local health board and that borne by the overseer of the poor. The question was ruled on in the courts

⁶² "Thus in December, for instance, the death-rate in Indiana from pulmonary consumption was 134.7 per thousand, while in Michigan it was only 83.6; from typhoid fever in Indiana, 61.6 as against 23.5 in Michigan; from diphtheria in Indiana, 47.7 as against 36.5 in Michigan."

⁶³ Burns (Supp. 1929), § 8192.

in 1918,⁶⁴ and the state examiner issues printed instructions on the subject:

Whatever the township pays it pays for paupers from the poor fund and by virtue of and in accordance with the poor laws. The township can pay no expense "incurred for the work of protecting the public health," but does pay for the care of paupers, sick or well, whether quarantined or not quarantined.⁶⁵

The State Board of Health has jurisdiction over control of tuberculosis and venereal disease. It must make an annual visit of inspection to the State Sanatorium,⁶⁶ and it must approve all plans for county tuberculosis hospitals.⁶⁷ Its other activities in connection with tuberculosis consist of co-operating with voluntary organizations, and in educational work and laboratory service. There is a special budget and personnel to carry on the work in venereal disease control. In 1921 the legislature passed a law⁶⁸ stipulating that venereal disease should not be a bar to admission to state institutions and that such cases should be given treatment. The State Board of Health laboratory is available without charge for laboratory diagnoses and tests to carry out provisions of the act, and "the various state institutions and the state board of health are to co-operate in every reasonable way in the prevention and suppression of the venereal diseases." Practically all control work in venereal disease, reporting, isolation, detention, quarantine, and treatment, are carried on by the state health department. It co-operates with city health departments in joint maintenance of venereal disease clinics; it pays the salary of the director of each clinic and supervises the work. There are 17 of these clinics.⁶⁹ Unfortunately, the State Board must sometimes combat the provincialism of local doctors who contend that they are competent to handle the problem through the channels of private practice. The service which the State Board of Health is able to render to the sick poor and to its citizens in general will

⁶⁴ *Board of Commissioners of Pike County v. Kime*. See above, p. 129, n. 22.

⁶⁵ Arguments on which the decision was based and instructions in detail as to what items are paid from the poor fund and what by the Board of Health are given in the statement. See *Indiana Bulletin of Charities and Correction* (January, 1931), pp. 17-18.

⁶⁶ Burns (1926), § 4245.

⁶⁷ Also see above, p. 138.

⁶⁸ *Acts* (1921), p. 106.

⁶⁹ *Health Departments of States and Provinces of the United States and Canada* (1929), pp. 242-43.

probably continue to be quite limited until the people are successful in securing new health legislation which will give to the state and local boards of health both authority and funds to carry out effective regulation.

STATE INSTITUTIONS FOR THE SICK POOR

Preceding by several years any general provision for the care of the sick poor the Hospital for the Treatment of Tuberculosis was established in 1907.⁷⁰ the name was changed in 1919⁷¹ to the Indiana State Sanatorium. For twenty years it was restricted to treatment for incipient tuberculosis, but in 1927 the law was altered to allow for treatment of "recoverable tuberculosis."⁷² By the act of 1907 an appropriation of \$30,000 was made for purchase of land for a hospital site, and a committee was created whose duty it was to select the location, build and equip the institution. The hospital was built near Rockville, Indiana, in the southwestern part of the state, and was opened April 1, 1911. The capacity of the hospital was only 100 beds until 1924, when it was enlarged to its present capacity of 160; accommodations are for "80 males and 80 females."⁷³

A great effort has been made to keep this institution from the evil influence of partisan politics. The control of the hospital is vested in a board of trustees, four in number, appointed by the governor, not more than two of whom may be of the same political party.⁷⁴ One member is appointed each year and serves for a period of four years. The trustees are paid a salary of \$300.00 a year each, and their expenses; any one of them may be removed from office by the governor for incompetency, misconduct, or neglect of duty. They designate, with the exception of the office of superintendent, what officers, physicians, nurses, matrons, agents, and employees shall be necessary, and they select the superintendent. The only qualifications specified for the superintendent are that he shall be a "competent and qualified superintendent for such hospital, who shall possess the

⁷⁰ *Laws* (1907), p. 198.

⁷¹ *Ibid.* (1919), p. 179.

⁷² *Acts* (1927), p. 552.

⁷³ *Annual Report, Board of State Charities*, 1913, pp. 55-56; *ibid.*, 1924, pp. 138-39; *ibid.*, 1931, pp. 317-18.

⁷⁴ *Burns* (1926), § 4245.

qualifications necessary to the proper discharge of the duties of the office."⁷⁵ He appoints all other employees. The board of trustees must maintain an effective inspection of the affairs and management of the hospital, but the "sanitary inspection" is placed in the hands of the State Board of Health. The law specifically stipulates⁷⁶ that "no political consideration shall be given in the selection or discharge of any officer or employee of such hospital," and the trustees are prohibited from "soliciting, requesting or in any manner interfering with the appointment or discharge of officers or employees to be selected by the superintendent of such hospital." The salaries of all officers and employees are fixed by the board of trustees with the consent and concurrence of the governor.

The facilities of the sanatorium are primarily for the indigent and "partially indigent." Other citizens may be admitted on a paying basis not to exceed \$5.00 a week if there is room after those unable to pay any or, at any rate, the whole of their expenses have been cared for.⁷⁷ The indigent and "partially indigent" are admitted by application blanks obtained from the township trustee who certifies the applicant's inability to pay all or any part of the expense. The township trustee pays transportation to and from the hospital and the county pays for care, not to exceed \$5.00 a week, which the patient is unable to pay. The remainder of the cost is borne by the state. The trustee fixes the amount to be paid by the county. If the patient fails to pay the portion he is apparently able to pay, the county has a right to bring action to recover the amount. To be eligible for treatment a person must be a citizen of Indiana with a year's residence in the state. The statement of a physician is required testifying to the patient's physical condition. All expenses are paid from the state treasury and all funds received are paid into the state's special fund.

Ever since the hospital was opened it has operated at full capacity and has usually had an excess population. In 1912 the daily average population was 97.32; the following year it went up to 111.53 and has had ever since an average daily attendance greater than its

⁷⁵ *Ibid.*, § 4247.

⁷⁶ *Ibid.*, § 4251.

⁷⁷ *Ibid.* (Supp. 1929), §§ 4255, 4257-58.

stated capacity.⁷⁸ While its capacity was only 100 beds, the average attendance fluctuated between 103.37 in 1921 and 142.85 in 1917. When the capacity was increased in 1924 to 160, the average attendance promptly mounted to 145.40 in 1924, 165.60 in 1925, and on up to 180.68 in 1931. The resources of the state have been inadequate to meet the need for the treatment of tuberculosis.⁷⁹ There has been a continual effort to encourage the establishment of further facilities by the local communities, and though progress has been made in that direction, adequate care is still not available.⁸⁰ There is no provision for the care for far-advanced and incurable cases.⁸¹

In financing the institution the state legislature has made a lump-sum appropriation for maintenance plus a per capita charge for "each person actually present over a daily average number of 100 (170 in 1931⁸² and 185 in 1933⁸³) each month; . . . said excess amount to be approved by the Board of State charities."⁸⁴ In 1911

⁷⁸ See statistics on state institutions, *Annual Report, Board of State Charities, 1924*, p. 179; *ibid.*, 1931, p. 366.

⁷⁹ "There is no doubt that the present tuberculosis facilities are entirely inadequate, and the state authorities and local physicians definitely agree on this point. . . . The hospital facilities provided by the state in its various institutions are not sufficient, so that Shelby County, among others, suffers. . . . The Indiana State Sanatorium at Rockville, Indiana, which is the only state institution for tuberculosis patients, is too small. The 1928 report of the medical superintendent reads, 'The Sanatorium interests have been well cared for during the year just passed. The greatest distress, which is ever present, is the great lack of beds for the admission of more patients. The real capacity of the institution is 160, but the average number of patients has been 170 plus a fraction. There are at all times over 300 on the waiting list'" (Peebles, *op. cit.*, p. 146).

⁸⁰ "Indiana now has one state tuberculosis hospital with 100 beds. The number available in local hospitals brings the total to 400. There should be from 3,800 to 4,000. We must look to the counties to provide them. Each of the larger counties should have its own hospital and the smaller ones could combine in establishing district sanatoria" ("Proceedings of the Twenty-sixth State Conference of Charities and Correction, 1917," *Indiana Bulletin of Charities and Correction* [June, 1918], p. 269).

⁸¹ "Concerning the Tuberculosis Hospital at Rockville, Dr. Tillotson said that while some people thought its main purpose was educational, and that patients were dismissed after a time, whether cured or not, they had been able to cure a great many. Many are incurable and the need of some provision for their care is very great" (*ibid.*, p. 270).

⁸² *Acts* (1931), p. 372.

⁸³ *Ibid.* (1933), p. 627.

⁸⁴ *Laws* (1911), p. 271.

the cost of maintenance was \$46,800 plus \$468 per capita for excess average population over 100; in 1921 the cost was \$85,000 plus \$850 per capita over 100; in 1931 it was \$70,000 plus \$700 per capita over 170 patients; and in 1933 it was \$56,000 for personal service, \$58,000 for all other operating expenses, and \$630 for each patient over a daily average of 185.⁸⁵ The total expenditures for the State Sanatorium have risen from \$55,870.49 in 1912 to \$147,856.01 in 1922, and \$177,765.90 in 1931.⁸⁶ Approximately 76 per cent of the 92 counties regularly have some of their citizens in the hospital as patients. During the five years, 1927-31 inclusive, the patient population represented 71 counties in 1927; 69 in 1928; 69 in 1929; 73 in 1930; and 67 in 1931. The local communities are still forced in large part to make other provision for care of their indigent tuberculosis patients than that of the State Sanatorium.

INDIANA UNIVERSITY HOSPITALS

As the three hospitals known as the Indiana University Hospitals are treated below in detail they will be handled here in a more summary fashion. They were all started by private initiative and with private funds, and are representative of that attempt, observable in the people of Indiana throughout its history, to furnish expert medical service to the sick poor in all parts of the state.

This group of hospitals was started with the founding of the Robert W. Long Hospital, a general hospital, which was established in 1911⁸⁷ and opened in 1914. It was given by Dr. Robert W. Long and his wife, Clara J. Long, to the state of Indiana on condition that it be maintained by the state and that the management be vested in the Board of Trustees of Indiana University.

The James Whitcomb Riley Hospital for Children was established in 1921⁸⁸ and was opened in 1924. It was founded through the activities and co-operation of the James Whitcomb Riley Memorial Association, and it also is under the management of the trustees of the University and is maintained by the state.

The third hospital added to the group was the William H. Cole-

⁸⁵ *Ibid.*: *Acts* (1921), p. 64; *ibid.* (1931), p. 372; *ibid.* (1933), p. 627.

⁸⁶ *Annual Report, Board of State Charities*, 1924, p. 179; *ibid.*, 1931, p. 366.

⁸⁷ *Laws* (1911), p. 15.

⁸⁸ *Acts* (1921), p. 833.

man Hospital for Women, which was established in 1927⁸⁹ and was opened the same year. It was the gift of William H. Coleman to the state, to be used primarily for "lying-in patients and a smaller number of gynecological cases," but if the beds are not filled with these cases women may be admitted for the treatment of other ailments. The hospital is maintained by the state and the management is in the hands of the trustees of the University.

The capacity of the three hospitals is, in all, 420 beds—"170 for males and 250 for females." Preference for admittance is given to indigent patients, but pay and part-pay patients are also admitted to the Long and Coleman hospitals. Although all of these hospitals are managed in accordance with the regulations of the trustees of the University, the legal provisions governing the Riley Hospital differ somewhat from those concerning the other two. Free care is given to wards of the state and to persons unable to pay the cost of care at the Long and Coleman hospitals. The expense is borne by the state. The state also assumes a part of the cost of treatment for persons able to pay some but not all of the expense. Patients are admitted upon application to the administrator, and indigence is certified to by the township trustee or other qualified authorities. The trustee pays transportation to and from the hospital and also the cost of special drugs and medical appliances. Admittance to Riley Hospital is by the judge of any circuit, criminal, or juvenile court. He is empowered to commit any child under sixteen years of age, having a legal settlement in the county, who, after a public hearing, appears to be suffering from a defect, disease, or deformity which may be benefited by treatment in the hospital and whose parents or guardians are unable to pay the expense of treatment. Any citizen of the county may petition the judge to institute proceedings. Application blanks may be obtained from the county clerk or from the hospital. The cost of care and treatment is paid by the county at rates which are fixed by the hospital. The county also pays traveling expenses for the child and for an attendant. All wearing apparel for the child while he or she is a patient at the hospital is furnished by the hospital. Although the law allows for treatment of pay patients, the policy of the hospital has been to restrict the service to poor chil-

⁸⁹ *Ibid.* (1927), p. 607.

dren, for whom the hospital was primarily established.⁹⁰ No compensation aside from that paid by the University may be charged or allowed to any physician, surgeon, or nurse for the care of any patient.⁹¹ An annual appropriation for maintenance is made by the General Assembly for each of the three hospitals. The funds received from the counties for the care and treatment of patients at Riley Hospital are paid into the state treasury, but the University is permitted to retain all other income, whether from patients' fees, contributions, or whatever source, for the use of the hospitals. In 1931 the hospitals gave care to patients from every county except one in the state, and to fifty patients from other states.

SUMMARY

It may be seen from this review of provisions that medical care for the poor may be obtained either through local or state resources. Out of 92 counties 25 have county general hospitals for their inhabitants, 7 have county tuberculosis hospitals, 7 communities pay subsidies to private hospitals, and 4 cities have public city hospitals. The remainder of the counties must depend upon the old poor law provision for payment of the private doctor, the use of the county asylum, the few preventive and protective measures of the board of health, and the state resources of the State Sanatorium and the University Hospitals.

County general hospitals have been established by only a little more than a fourth of the counties, and are small hospitals in small communities which do not afford the more expert service and expensive equipment of the teaching hospital. Seven county tuberculosis hospitals with a bed capacity of 996, and a State Sanatorium with a capacity of 160 beds, supply the inadequate treatment facilities for tuberculosis for a state with a population of more than three million inhabitants. The use of public subsidies to private hospitals has been used in a few instances where the facilities of the hospital in a city

⁹⁰ "The hospital will not receive pay patients for the present, but will devote its service entirely to the indigent patient. The institution was established primarily for the poor children of the state, consequently this policy, which has been adopted by the authorities of the hospital" (Robert E. Neff, "The Riley Hospital for Children," *Indiana Bulletin of Charities and Correction* [December, 1924], pp. 170-72).

⁹¹ Burns (1926), §§ 7150-59.

were available, but the communities have not found the plan a feasible one generally. The county asylums furnish a makeshift and inexpert type of care for the sick at best, and, at worst, afford disgraceful and inhuman treatment. The old system of paying the private doctor is subject to abuse at times either by the overseer of the poor or by the doctor, or by both; and the skill of the physician and the quality of service he is able to render must vary unevenly from one community to another—from the less expert services of the country doctor of the rural areas to the more experienced physician of the cities. What could be a more logical resource for expert medical care for the sick poor of all parts of the state than the trained staff of the Indiana University Medical School and the University Hospitals?

CHAPTER IV

THE INDIANA UNIVERSITY HOSPITALS

The spirit which led to the establishment of the Indiana University Hospitals is representative of the attitude of the people of Indiana. The hospitals are the result of the belief that the state is responsible for the welfare of its people and should make proper provision for the care of the sick; of the desire to make that care available to all the inhabitants alike without the stigma of pauperism; of their pride in furnishing through those institutions the best possible type of medical care; and of the kindly, generous disposition which would not withhold from visitors in distress within the borders of the state the benefits provided for themselves. Indiana has been fiercely proud of her legislation in the field of social welfare, but she has often lagged behind in the administration of her laws.¹ She has from her earliest days recognized the state's responsibility for her unfortunate citizens,² and has always insisted that the sick stranger be given aid. Since the creation of the Board of State Charities an effort has been made to follow the advice of the eminent men who

¹ "It may be necessary to modify some of our laws and systems in minor particulars, but the greater need is wiser and more persistent administration of them. They have never been used to the fullest extent" (John A. Brown, "The State and Social Work," *Proceedings of the Indiana State Conference on Social Work*, 1930; *Indiana Bulletin of Charities and Correction* [February, 1931], p. 37).

² "... Indiana began early in its history to recognize its responsibility to her unfortunate citizens. The state by law adopted the policy of assuming the duty of the administration, regulation and supervision of many features of social welfare work. . . . We justify this position and its activities in the field of social welfare on the principle that the chief function of government is the promotion of the social and economic welfare of its citizens. . . . There is the constant urge for the state and its subdivisions to take over additional welfare functions. The legislature is importuned at every session by groups of its citizens demanding further governmental participation in this field. In view of the fact that society insists upon the state monopolizing the administration, regulation and supervision of so many of its social welfare problems, may we not ask ourselves if the state has accepted all the responsibility that is implied?" (*ibid.*, pp. 34-35).

have acted as secretary of that Board.³ The practice of other states has been studied and an effort has been made to profit by their experience;⁴ and a glow of pride has been felt when words of commendation from welfare leaders outside the state praised the forward-looking legislation of the state.⁵ An effort has likewise been made to learn the best way to care for the unfortunate citizens, and having learned it, to carry the plan through to fulfilment. It is to these qualities of the people that Indiana owes the University Hospitals.

THE PURPOSE OF THE HOSPITALS

This spirit manifested itself in the generous gift of private individuals in the case of the Robert W. Long and the William H. Cole-

³ Alexander Johnson, 1889-93; Ernest P. Bicknell, 1893-98; Amos W. Butler, 1898-1923; John A. Brown, 1923—.

⁴ "When I was considering the invitation to come to Indiana to be the first secretary of the Board of State Charities, Oscar McCulloch, who was urging me to come, said, 'You will find the people of Indiana are a kindly, responsive people, hospitable to new men and new ideas,' and I found that he was right. I found the public officials, both those of the state and of the county, were nearly all men and women sincerely desirous of doing their work as well as they knew how, sometimes working under difficulties and sometimes inadequately supplied with money and help, but nearly always responsive to reasonable suggestions, sometimes pathetically eager for good advice" (Alexander Johnson, "Social Work, Past and Present," *Proceedings of the 31st State Conference of Charities and Correction*, 1922, *Indiana Bulletin of Charities and Correction* [June, 1923], p. 101).

⁵ "I have studied the advances made by our state institutions and the better standards obtained therein. I am acquainted with the state supervision of outdoor poor relief, which has resulted in improved administration and an enormous saving to the taxpayers; with the work of the committee on child welfare and on mental defectives which has been enlightening and helpful. . . . All that has been desired has not been accomplished, for there are still many advances to be made. However our system of charities occupies a conspicuous position in the eyes of the nation and receives much praise from those who study these great social questions. At the meeting of the National Conference of Charities and Correction, now the National Conference of Social Work, at Indianapolis in 1916, the following resolution was adopted: 'That we congratulate the State of Indiana in view of the amazing achievements of the past twenty-five years in the development of the state-wide program of social work. We believe that it is fair to say that no state in the Union has accomplished more in this direction in the same length of time, and that no state, with the possible exception of Massachusetts, has come nearer to the development of a universal social program.' At the same time we have not yet done all that we should. All our institutions should be brought up to the best standard possible" (Hon. Warren T. McCray, Governor of Indiana, "The State's Big Problem," *Proceedings of the 30th State Conference of Charities and Correction*, 1921, *Indiana Bulletin of Charities and Correction* [June, 1922], p. 52).

man hospitals, and in the contributions from the people from all parts of the state in the case of the James Whitcomb Riley Hospital. The sick poor are the most recent group of unfortunates for whom state institutions have been provided. The insane, the feeble-minded, the misdemeanants, the delinquents, the epileptic, all came before the tuberculous, and, finally, the indigent sick.

The terms of the bequest of Dr. Long and his wife leave no doubts as to the purpose of the hospital which they started for the people of Indiana. In 1911 the General Assembly accepted donations of real estate amounting to \$200,000 to be used to erect in the city of Indianapolis a hospital in connection with the School of Medicine of Indiana University. The purpose of the donors, according to their proposal⁶ to the General Assembly, was twofold: first, to make it "possible for worthy persons of limited means from all parts of Indiana to secure hospital advantages and the services of the best physicians in connection therewith, such as can now be had only by those residing in cities where public hospitals are established"; and second, to provide clinical facilities for students of medicine in connection with the Indiana University School of Medicine.⁷ Commenting further upon their objects, the donors stated that they realized that there were in all parts of Indiana many worthy men and women and children who could be relieved from a life of suffering and be prepared to support themselves instead of being dependent upon the public, if they could afford to go to a good hospital. "We desire to bring relief as far as possible to such persons and we believe that our purpose can be carried out best through the agency of the state university." They said that they had reason to believe that when the hospital was under way that it would be enlarged⁸ by gifts from others for special wards or departments and that as the years passed that it would become increasingly a "benefit to mankind." Because of their interest in medical education they wished the hospital to be "equipped and conducted in such a way as to be as beneficial as possible to medical science and medical education." They believed this could best be accomplished through the agency of the trustees of Indiana University in connection with the medical school.

⁶ For text of the proposal see below, p. 197.

⁷ *Laws* (1911), p. 15.

⁸ The amount was later increased to \$240,000.

The donation was given on condition that not less than 60 per cent of the gift should be devoted to the construction of the hospital building; that the trustees of the university should be intrusted with the management and control of the hospital and should manage it in such a way as to serve the people of the state as far as possible and to advance medical science and education; and, lastly, that the General Assembly should provide for the permanent maintenance of the hospital, and pledge the faith of the state that the terms and conditions under which it was established should not be subject to repeal. The hospital must forever bear the name of the Robert W. Long Hospital of Indiana University. The proposal also imposed the condition that Dr. Long should be, during his lifetime, the chairman of the committee appointed by the trustees to build and manage the hospital. The General Assembly made an appropriation of \$25,000 for 1912 and of the same amount annually thereafter for maintenance of the hospital.⁹ In 1913 it made an appropriation of \$65,000 for the hospital and medical school for 1914, and \$50,000 annually thereafter in addition to the annual appropriation of \$25,000 made in 1911.¹⁰

The hospital is on a tract of land of sixteen acres within the city limits of Indianapolis, and cost about \$192,000. When it was opened in 1914 its capacity was 104 beds. In commenting upon the value of the hospital to the people of the state the Board of State Charities said it was difficult to "refrain from superlatives" in speaking of this addition to the state's charities which provides for the poor from any part of the state, free of cost, the same expert medical and surgical care that is available for those who live in cities.¹¹

The inadequacy of one small hospital to meet the needs of the people of the whole state, especially the need for care for children, was soon evident. The lament of the Board of State Charities and of social organizations in the state year after year was over the lack of

⁹ *Laws* (1911), p. 15.

¹⁰ *Ibid.* (1913), p. 312.

¹¹ "This hospital is for the people of the entire State, as a city hospital is for the people of the city. It can extend its ministrations to all our people. Those who live in the rural communities and the small counties, the poor and the children who are public wards, all can have the same benefits as if they had all the hospital facilities of a large rich city" (*Annual Report, Board of State Charities, 1914*, p. 88). See also *ibid.*, p. 15.

treatment facilities for diseased and handicapped children.¹² The activities of the Riley Memorial Association, the increasing interest in child welfare, and the demand of the people for a children's hospital, resulted in the passage of the law in 1921 creating the James Whitcomb Riley Hospital for Children. The legislature appropriated \$125,000 for construction and equipment of the hospital, an additional \$75,000 annually for two fiscal years for equipment and maintenance, and \$50,000 annually thereafter for maintenance.¹³ The law also authorized the trustees of the university to receive contributions and bequests for the hospital. The sum appropriated was utterly inadequate to build the hospital, and immediately following the action of the legislature an executive committee was organized which assumed responsibility for raising additional funds.

The James Whitcomb Riley Memorial Association, started by the poet's friends soon after his death to perpetuate his memory by the establishment of a memorial, decided that no more appropriate tribute could be made to the much loved "Hoosier poet" than a hospital for sick and crippled children. The executive committee, composed of members of this association and of members of the Board of Trustees of Indiana University, started a state-wide campaign for funds which lasted several years and resulted in contributions from 30,000 individuals from all parts of the state amounting to \$1,100,000.¹⁴ Rarely is there found such good material on

¹² "A recent Red Cross survey showed that 85 per cent of the children in the public schools of our state have physical defects of one kind or another, and as a result are greatly hindered in the development of the highest type of efficiency in any of their work.

"Indiana has just one state hospital to which poor children can be sent for free treatment—the Robert W. Long Hospital of Indianapolis. The children's ward in that institution holds the pitifully small number of twelve beds, and the staff of the Robert W. Long Hospital feels greatly the need for more adequate facilities for service. . . . As it is now, a child by no means ready to be permanently released, frequently has to be crowded out in order to give up his bed for a new case and his own progress is thereby immeasurably retarded" (Mrs. Curtis Hodges, Riley Memorial Hospital Association, "The Physically Handicapped Child," *Proceedings of the 31st State Conference of Charities and Correction*, 1922; *Indiana Bulletin of Charities and Correction* [June, 1923], p. 107).

¹³ *Laws* (1921), p. 833.

¹⁴ Robert E. Neff, "The James Whitcomb Riley Hospital for Children," *Indiana Bulletin of Charities and Correction* (December, 1924), p. 170.

Popular subscriptions amounting to more than \$3,000,000 were eventually raised

which to base a public appeal for funds. The men's service clubs, women's clubs, churches, schools, social welfare and health organizations, all joined in the general campaign. School children who had been taught to love the poet Riley, and to recite his verses about the "Little Cripple" and "Little Orphant Annie," were "given an opportunity" to make a contribution to build this hospital for little children in memory of "their poet-friend." Referring to the strength of this appeal, an editorial writer on the *Indianapolis News* told the Indiana social workers that the Riley Hospital was an example of something that was built almost entirely through the use of publicity. The subject matter offered the newspaper writer great opportunity—he could write a "sob-story" about Riley and the children, or he could appeal to the business man on the basis of economy in human suffering.

Whatever the appeal happened to be, the newspapers of Indiana devoted thousands of columns of space to the Riley hospital and the best explanation of what happened is the announcement that the institution has been built and will be dedicated before the present week is over.¹⁵

In 1923 the legislature appropriated an additional \$275,000, making a total of \$400,000 from the state for construction. The hospital plant, when it was opened in 1924, represented an expenditure of \$1,500,000. Thousands of people came from all over the state to the dedication ceremonies of the hospital they had helped to build.

The hospital had a capacity of approximately 200 beds when it was opened in 1924, but the plans called for the construction of three more ward units which would bring the capacity up to about 350 beds. By continuing the drive for funds they hoped to carry out

for the establishment of the hospital. See James Clark Fifield, *American and Canadian Hospitals*, p. 348.

¹⁵ "Here was a situation that permitted the newspaper writer wide latitude. He could write the old time sob-story if he cared to do so, picturing James Whitcomb Riley and his love for children, quoting the poem about the happy little cripple and weeping for and with those children who needed to be brought to the attention of physicians and surgeons competent to deal with their various ills. Or he could appeal to the practical, hard-headed man and show him that the state was engaged in poor business when it permitted so much raw material to remain useless when through the ministrations of the proposed hospital, hundreds and perhaps thousands of children could be restored to normal and made useful, self-supporting citizens" (Tom Elrod, "The Newspaper as an Interpreter of Social Welfare," *Proceedings of the State Conference of Charities, 1924, Indiana Bulletin of Charities and Correction* [December, 1924], p. 227).

these plans later. Shortly after the opening of the hospital the administrator wrote enthusiastically that it had been declared by medical and hospital authorities from various parts of the country "the most complete and up-to-date children's hospital in the United States."¹⁶ Its facilities include a gymnasium, out-patient departments, milk laboratory, special diet laboratory, orthopedic appliance shop, dental clinic, and recreational activities, including occupational therapy, school service, which provides teaching for patients of school age, library service, and play room.¹⁷

There is an advisory committee from the Riley Memorial Association to assist the trustees of the university in making the policies and in managing the hospital. They believed that there were thousands of cases in Indiana which could be benefited through the service of this institution and declared their intention of receiving any type of case which the judge in conference with a local physician deemed it advisable to send. Although discouraging the use of the hospital for chronic cases, the administrator will accept such cases for observation and diagnosis. This is not an institution restricted to services for crippled children but is for any poor child who may be helped by the skilled medical and surgical treatment or who needs special diagnostic study.

The hospital seeks to be of every possible service to any sick child of the State of Indiana, admissible under the rules of the institution, and solicits the support of every citizen of the State of Indiana in bringing to the attention of the hospital every child needing the service which it offers; . . .

but the institution was established primarily for the poor children of the state and has been restricted to their care.¹⁸

The William H. Coleman Hospital for Women was a gift to the state from Mr. Coleman and his wife in memory of their daughter. In 1927 the General Assembly accepted property and securities amounting to \$250,000¹⁹ for the establishment of a hospital to be used primarily for lying-in patients and a smaller number of gynecological cases, and for other women's cases when the beds are not all

¹⁶ "No efforts have been spared in planning, building and equipping the institution to make it the best and most efficient institution for the care of the sick and crippled children who will receive its services" (Neff, *op. cit.*, p. 171).

¹⁷ *Ibid.*, p. 170. ¹⁸ See above, p. 152. ¹⁹ This amount was later raised to \$350,000.

occupied, to provide clinical facilities for the students in connection with the Indiana University School of Medicine.²⁰ The gift was made on condition that the hospital should care for patients who are not able to pay and also for patients able to pay part or all of the expenses of their care; that the institution should be supported by the state; and that it should be known forever as the William H. Coleman Hospital for Women.²¹ The control and management of the hospital must be vested in the trustees of the university. The legislature made an annual appropriation of \$75,000 for support and maintenance of the institution, payments to begin when the hospital was sufficiently completed to receive patients.

The Coleman Hospital is a small hospital with 68 beds and 35 bassinets. It is located in the same tract of land with the Robert W. Long Hospital and the James Whitcomb Riley Hospital for Children. In 1931 the Long Hospital was rated as having a bed capacity of 107, and Riley of 210, making the capacity of the three hospitals 420 beds.

Not of this group of hospitals, but supplementing the service of the Riley Hospital, is the Rotary Convalescent Home, which was built by the Rotary clubs of Indiana for convalescent patients from the Riley Hospital in order to relieve the congestion there and make room for new patients. The home was built at a cost of \$236,000, with subscriptions raised by the Rotary clubs. It has a capacity of 60 beds and was dedicated November 15, 1931.²²

ADMINISTRATION

Admittance to Long and Coleman hospitals is by application to the administrator of the hospitals, accompanied, in the case of indigent patients, by a "trustee's certificate,"²³ and in the case of patients of very limited means by a "part-pay certificate," stating the patient's inability to pay any or all of the expense of care. There is a rate of \$10.50 per week for persons of very limited means plus \$5.00 for operating room service and \$6.00 for delivery room service.

²⁰ *Acts* (1927), p. 607.

²¹ For text of the proposal see below, p. 199.

²² Fifield, *op. cit.*, p. 349.

²³ For application blank and trustee's certificate see forms below, pp. 177, 178.

Other charges are from \$5.00 to \$8.00 a day for private patients; \$3.00 at Long, and \$4.00 at Coleman for semi-private; \$3.00 for full-pay ward; \$1.50 for part-pay ward; \$5.00-\$10.00 for operating room service; \$5.00 for major or minor operations for full-pay or part-pay wards; delivery room \$11.00; gas \$5.00; delivery room fee for part and full-pay wards \$6.00. The majority of the beds are for those unable to pay.²⁴

Admittance to Riley Hospital is by commitment by the judge of a circuit, criminal, or juvenile court; in connection with the admittance there are five forms to be filled out.²⁵ Rules and regulations concerning the procedure, and instructions for filling out the blanks, are furnished with the forms. There is a Form, No. 6, to be made out by "any citizen of the county" petitioning the judge to institute proceedings leading to the admission of the child. The judge may, "in his discretion," have the child examined by a physician, selected by the judge, who makes a report of the history and condition of the child, and the probable results of treatment. The physician makes his report on Forms No. 7 and No. 10. The judge's commitment is made out on Form No. 8; and Form No. 9 contains authority to an attendant to take the child to the hospital, a receipt signed by the hospital showing the child has been admitted, and the report to the court by the attendant, when he returns, including his expense account. The citizen's petition and the doctor's statement that the patient needs hospital care are retained in the county files. The judge's commitment and the physician's report on physical condition are sent to the hospital. The authority to the attendant is taken to the hospital with the patient and is returned to the county files. Use of the facilities of the hospital depends greatly upon the judge and the doctors whom he appoints to examine the child. The doctor may decide that the child cannot be benefited or he may decide that the child can be given equally good care by a private physician in the local community. People are advised not to send patients to any of the University Hospitals until word has been received that they can be admitted, as the beds are usually filled to capacity.

During the first year that Riley Hospital was in operation more than 1,200 patients were admitted for hospital care, besides the 600

²⁴ Fifield, *op. cit.*, pp. 347-49.

²⁵ See forms below, pp. 179-85.

served through the out-patient clinics; a waiting list of more than 100 patients was on file at all times during the year. The administrator stated at that time that the cases presented to the hospital during the first year demonstrated the great need for the hospital in Indiana. "It is safe to say that the majority of the 1,200 cases admitted during the year would have gone unattended had it not been for the hospital with its fine facilities."²⁶ The Robert W. Long Hospital is filled to capacity at all times and carries a waiting list averaging about 400 patients.

A hospital twice the capacity would barely meet the demands now being made upon it. The hospital offers its service to those patients requiring active medical or surgical treatment, and those cases requiring merely institutional care are not acceptable nor are patients with mental or contagious diseases eligible for admission.²⁷

The William H. Coleman Hospital also is operating at capacity, with many patients on the waiting list.

The hospital is capable of rendering services of inestimable value to those confinement cases from parts of the State requiring expert care, and is destined to become one of the most important institutions in the country in the matter of promoting better obstetrics.²⁸

During the years 1915-24, when the Robert W. Long Hospital was the only state hospital for the sick poor, aside from the Tuberculosis Hospital, the number of new admissions was 1,448 in 1915, and after that varied from 1,603 to 2,154. After Riley Hospital was opened in 1924 the number rose from 2,977 in 1925 to 3,647 in 1926, and 4,190 in 1927. Coleman Hospital was added in 1927, and thereafter the admissions mounted to 6,126 in 1928, 6,611 in 1929, 7,265 in 1930, and 8,129 in 1931. Figures for the number of patients present on the last day of the fiscal year, September 30, show a variation during the first ten years, 1915-24, from 89 in 1915, and 87 in 1916, to 147 in 1924. With the increase in capacity in 1924 the number of patients present was 264 in 1925, 242 in 1926, and 272 in 1927. During the next four years after Coleman Hospital was opened the fig-

²⁶ Robert E. Neff, "The James Whitcomb Riley Hospital for Children," *Modern Hospital*, XXVI, No. 6 (June, 1926), p. 8 (reprint).

²⁷ Letter from J. B. H. Martin, Administrator, Indiana University Hospitals, dated July 31, 1933, sent in response to request from the writer.

²⁸ *Ibid.*

ures were 327 for 1928, 324 for 1929, 439 for 1930, and 423 for 1931. The daily average attendance grew from 69 in 1915 to 120 in 1924, to 248 in 1925, to 317 in 1928, and 391 in 1931.²⁹ In Table IV have been assembled the figures showing the number of patients present at the end of each year from 1915 to 1931, the number of new admissions as well as the daily average attendance.

TABLE IV
HOSPITAL POPULATION, EXPENDITURES, AND PER CAPITA COST
OF THE UNIVERSITY HOSPITALS, 1915-31

YEAR	POPULATION			EXPENDITURES			PER CAPITA COST	
	Present End of Year	Number of New Admissions	Average Daily Attendance	Maintenance	Permanent Improvements	Total	Per Year	Per Day
1915.....	89	1,448	69	\$ 76,262.90	.....	\$ 76,262.90	\$1,105.27	\$3.03
1916.....	87	1,897	89	86,305.39	.....	86,305.39	969.72	2.65
1917.....	94	1,853	92.80	92,746.13	.....	92,746.13	999.42	2.74
1918.....	94	1,603	102.70	101,976.52	\$ 3,307.10	110,283.62	992.96	2.72
1919.....	112	1,639	101.90	116,306.50	8,232.77	124,539.27	1,141.38	3.12
1920.....	122	1,681	107	137,381.78	8,087.43	145,469.21	1,283.94	3.52
1921.....	104	1,885	106.77	152,162.10	8,000.00	160,162.10	1,425.14	3.90
1922.....	121	2,047	112	153,661.12	8,000.00	161,661.12	1,371.08	3.76
1923.....	120	1,857	119	161,770.01	8,000.00	169,770.01	1,359.41	3.72
1924.....	147	2,154	120.20	186,328.52	11,809.40	198,137.92	1,550.15	4.25
1925.....	264	2,977	248.18	365,924.13	36,742.50	402,666.63	1,622.48	4.44
1926.....	242	3,647	241.38	407,917.35	38,848.18	446,765.53	1,689.93	4.63
1927.....	272	4,190	217.09	399,455.06	20,689.64	420,144.70	1,840.04	5.04
1928.....	327	6,126	317.68	530,082.26	20,959.37	551,041.63	1,668.60	4.55
1929.....	324	6,611	333.35	544,193.14	21,393.98	565,587.12	1,632.50	4.47
1930.....	439	7,265	360.75	578,703.64	24,099.57	602,803.21	1,604.17	4.39
1931.....	423	8,139	391.42	600,642.36	37,736.44	638,378.80	1,534.52	4.20

It is interesting to notice the proportion of new admissions classified as "sick" to state institutions since 1900 and the proportion cared for in the Indiana University Hospitals. During the 10-year period, 1901-10, there were 26,097 new admissions, none of which was classified as sick; there were, of course, no University Hospitals. From 1911 to 1920 there was a total of 53,555 admissions, of which 12,896 were classified as sick, and 10,121 were admitted to the Uni-

²⁹ *Annual Report, Board of State Charities, 1930*, p. 435; *ibid.*, 1931, pp. 340-345, 365.

versity Hospitals from 1915 to 1920. Between 1921-30 the total new admissions to state institutions was 118,697, of which 40,212 were classified as sick, and 38,759 were cared for in the Indiana University Hospitals. Of the total 172,252 new admissions to the twenty state institutions from 1911 to 1930, since the sick have been classified separately and since the establishment of the first of the University Hospitals in 1914, 53,108, or 30.83 per cent, have been for the sick, and 48,880, or 28.39 per cent, have been admissions to the three University Hospitals.³⁰

HOW THEY ARE FINANCED

The maintenance of these hospitals is governed by special laws.³¹ The state appropriates a fixed sum for each hospital—\$50,000 annually for Long Hospital, and \$75,000 annually for each of the other two, Coleman and Riley, hospitals. Additional sums are appropriated for repairs, new buildings, or any other extraordinary expenses. All receipts—patients' fees, contributions, and so forth—are retained by the hospitals, and any additional sum required for operation of them is supplied by the University through a special tax. The state pays the expense for the treatment of patients at Riley Hospital and the reimbursement from the counties is paid into the state treasury.

Since the opening of Coleman Hospital annual receipts from patients' fees from the two hospitals have varied from approximately \$92,000 in 1929 to about \$74,000 in 1931. Reimbursements from county claims for patients at Riley Hospital have run from approximately \$191,000 in 1929 to \$234,000 in 1931. The amounts paid from the Indiana University tax varied in round numbers from \$74,000 in 1930 to \$104,000 in 1931. Contributions received for the hospitals amounted approximately to \$1,700 in 1928, and to \$4,600, \$5,800, and \$6,200 in the years 1929, 1930, and 1931, respectively. During the same four years expenditures for maintenance have risen steadily from \$530,000 in 1928 to \$600,000 in 1931. The yearly per capita cost for maintenance has decreased somewhat from \$1,668 in 1928 to \$1,534 in 1931. The daily per capita cost for maintenance has gone down from \$4.55 in 1928 to \$4.20 in 1931. The lowest year-

³⁰ *Ibid.*, 1930, pp. 409-10.

³¹ *Laws* (1911), p. 15; *ibid.* (1913), p. 312; *ibid.* (1921), p. 833; *Acts* (1927), p. 607.

ly per capita cost during the 17-year period from 1916-1931 was \$969 in 1916 and the highest, \$1,840, in 1927; the lowest daily per capita cost was \$2.65 in 1916 and the highest \$5.04 in 1927.³² Further figures on expenditures and costs are given in Table IV.

THEIR USE BY THE COUNTIES

The question naturally arises as to what extent these hospitals are used by the different counties. Although the statutory provisions make the facilities of these hospitals equally available to patients from all parts of the state, the distance between the county and the hospital has an important influence upon the use made of the hospitals. During the four years from 1928 to 1931, 91 of the 92 counties had patients admitted, and in 1930 every county was represented. As would be expected, Marion County, which is the most populous county in the state and the one in which Indianapolis is located, makes by far the greatest use of the hospitals. Of the 423 patients present on the last day of the fiscal year, 1931, 162 were from Marion County. The next largest number from any one county was 14 from Hendricks County, which adjoins Marion County on the west. There were 8,139 patients admitted to the hospitals during 1931, and of these 3,950 came from Marion County, and the next largest number, 242, came from Johnson County, which is the county just south of Marion County. There were three counties which sent only one patient each during the year; three counties which sent only two patients each; and twenty-three counties which sent nine patients or less. Of the patients in the hospitals, 98.48 per cent were sent by 85.87 per cent of the counties. Thirteen counties, 14.13 per cent, sent 100 or more patients each, making 5,703 patients, or 70.07 per cent of the total. The remaining fifty-six counties sent from 10 to 100 patients each, a total of 2,312, or 28.41 per cent.³³ In Table V are shown the population of the various counties, the number of patients from each in the University Hospitals in 1931, the number of sick cared for in their county asylums, and the counties having county hospitals or private hospitals subsidized with public funds to care for their sick poor.

³² *Annual Report, Board of State Charities, 1928-31.*

³³ *Ibid.*, 1931, pp. 337-39, 342-44.

TABLE V

POPULATION OF THE VARIOUS COUNTIES, NUMBER OF SICK CARED FOR IN COUNTY ASYLUMS AND IN THE UNIVERSITY HOSPITALS IN 1931; AND INDICATING WHICH COUNTIES HAVE COUNTY GENERAL HOSPITALS, COUNTY TUBERCULOSIS HOSPITALS, AND PRIVATE HOSPITALS SUBSIDIZED WITH PUBLIC FUNDS

COUNTIES	POPULATION, 1930	POPULATION, PRESENT	
		Number of Sick in County Asy- lums, Au- gust 31, 1931	Number of Patients in University Hospitals, September 30, 1931
Adams*.....	19,957	3	1
Allen†.....	146,743	36	6
Bartholomew*.....	24,864	7	2
Benton.....	11,886	2	.....
Blackford*.....	13,617	4	.....
Boone*.....	22,290	9	7
Brown.....	5,168	.....	2
Carroll.....	15,049	4	5
Cass*.....	34,518	8	3
Clark*.....	30,764	1	1
Clay*.....	26,479	5	3
Clinton*.....	27,329	13	5
Crawford.....	10,160	1	.....
Davies*.....	25,832	1	3
Dearborn.....	21,056	5	.....
Decatur*.....	17,308	3	1
Dekalb.....	24,911	2	.....
Delaware†.....	67,270	18	6
Dubois.....	20,533	2	3
Elkhart†.....	68,875	4	3
Fayette†.....	19,243	14	2
Floyd.....	34,655	3	.....
Fountain.....	17,971	1	.....
Franklin.....	14,498	3	2
Fulton.....	15,038	5	.....
Gibson.....	29,202	4	2
Grant†.....	51,066	9	7
Greene*.....	31,481	10	5
Hamilton*.....	23,444	6	6
Hancock.....	16,605	4	6

* County general hospitals.

† County tuberculosis hospitals.

‡ Private hospitals subsidized with public funds.

THE INDIANA POOR LAW

TABLE V—Continued

COUNTIES	POPULATION, 1930	POPULATION, PRESENT	
		Number of Sick in County Asy- lums, Au- gust 31, 1931	Number of Patients in University Hospitals, September 30, 1931
Harrison.....	17,254	2	1
Hendricks.....	19,725	8	14
Henry*.....	35,238	5	3
Howard.....	46,696	8	11
Huntington*.....	29,073	11	6
Jackson.....	23,731	4	.....
Jasper*.....	13,388	4	.....
Jay.....	20,846	3	4
Jefferson.....	19,182	4	.....
Jennings.....	11,800	.....	3
Johnson.....	21,706	11	10
Knox*.....	43,813	6	3
Kosciusko.....	27,488	15	3
Lagrange.....	13,780	4	.....
Lake†.....	261,310	124	10
LaPorte.....	60,490	14	2
Lawrence.....	35,583	2	4
Madison†.....	82,888	22	10
Marion†.....	422,666	111	162
Marshall.....	25,077	4	.....
Martin.....	10,103	1	.....
Miami*.....	29,032	3	2
Monroe.....	35,974	1	8
Montgomery*.....	26,980	4	5
Morgan*.....	19,424	9	12
Newton.....	9,841	3	.....
Noble.....	22,404	3	2
Ohio.....	3,747	.....	.....
Orange.....	17,459	4	.....
Owen.....	11,351	.....	5
Parke.....	16,561	4	2
Perry.....	16,625	.....	.....
Pike.....	16,361	1	1
Porter.....	22,821	6	2
Posey.....	17,853	20	.....
Pulaski.....	11,105	5	1
Putnam*.....	20,448	8	5
Randolph*.....	24,859	10	1
Ripley.....	18,078	1	.....
Rush.....	19,412	4	7

TABLE V—*Continued*

COUNTIES	POPULATION, 1930	POPULATION, PRESENT	
		Number of Sick in County Asy- lums, Au- gust 31, 1931	Number of Patients in University Hospitals, September 30, 1931
Scott	6,664	.....	.....
Shelby	26,552	2	7
Spencer	16,713	1	.....
Starke	10,620	2	.....
Steuben	13,386	.....	3
St. Joseph†	160,033	45	.....
Sullivan*	28,133	6	3
Switzerland	8,432	1	.....
Tippecanoe†	47,535	16	1
Tipton	15,208	7	2
Union	5,880	.....	.....
Vanderburgh†	113,320	57	3
Vermillion*	23,238	8	4
Vigo	98,861	23	4
Wabash*	25,170	1	1
Warren	9,167	1	1
Warrick	18,230	3	.....
Washington	16,285	1	2
Wayne	54,809	12	6
Wells*	18,411	1	1
White	15,831	.....	2
Whitley	15,931	4	.....
Outstate .....	.....	.....	3
Total	3,238,503	827	423

The question of family separation, long periods of hospitalization, and expense of travel, plus the lack of local resources, make the problem of care for small, remote counties one difficult of solution. Length of stay in government hospitals is usually of longer duration than in private hospitals.³⁴ Even in nearby counties the length of stay in the University Hospitals tends to be longer than in the private hospitals. In Shelby County the people make great use of the Indianapolis hospitals, private as well as state, although there is a

³⁴ I. Falk *et al.*, *The Costs of Medical Care*, p. 340.

small city hospital in Shelbyville, the largest town in the county, which is only 26 miles from Indianapolis.³⁵ More Shelby County patients went to the private hospitals than to the University Hospitals in 1928, but the number of days of service to them in the latter institutions exceeded the number of days in all other Indianapolis hospitals combined. In the same year the little hospital was not used more than 40 per cent of its capacity any one month, and sometimes as little as 23 per cent. By far the largest number of patients sought the superior service of Indianapolis hospitals, both public and private, for surgical service. This use of the larger hospitals and neglect of the small local hospital gives rise to conjecture as to its influence upon standards of care in the local hospitals and also in the overcrowded public institutions. Interesting information on this question of standards of care might be elicited by further study of the treatment facilities of the small hospitals of the local governmental units.

SERVICE TO THE PATIENTS

Recognition of the need of services to patients aside from the purely medical was given by officials closely connected with the operation of the University Hospitals from their very beginning. The social implications of illness, its devastating effects on indigent persons, and on those of very limited means, the need of adequate follow-up of discharged patients, and the significance of the social situation of the patient in the diagnosis and treatment of disease were frequently stressed in the effort to develop a well-rounded program of service to the sick. Representative of this attitude was the statement made by the administrator of the hospitals in 1922:

The modern hospital well equipped and administered can be a most remarkable and creditable means in the program of social betterment. Since the majority of our social inadequacies are due and so closely related to illness and disease, the hospital occupies a strategic position and faces a great opportunity and a corresponding responsibility. We must recognize illness as a nuisance. It interferes with the enjoyment and useful activities of life and brings with it maladjustments, abnormal social conditions, and the menace of pauperism. Our national security and social contentment is dependent in a great measure

³⁵ Allon Peebles, *A Survey of Medical Facilities of Shelby County, Indiana: 1929*, p. 110.

on individual health; consequently, the health problem becomes vital in our efforts to create a social structure which embodies the elements which are so essential to the human welfare and happiness of the commonwealth.³⁶

Essential to a well-rounded program of treatment of the patient are the services of a department of social service adequately staffed with skilful, well-trained medical social workers.³⁷ Charles P. Emerson, for many years dean of Indiana University School of Medicine, bears the distinction of being one of the early advocates and founders of medical social work in this country. Under his guidance and direction Indiana University claims the honor of having the first social service department organized and paid for by a state.³⁸ It was started September 20, 1911, in the Department of Economics and Social Science, but its work was in the School of Medicine in Indianapolis. Its quarters were in the School of Medicine and the Indianapolis City Dispensary, which was maintained by the City Board of Health and the School of Medicine.³⁹ Although it was intended by the university for educational purposes, its services were devoted to the interests of sick people. The aim of the department from its inception was to make its activities state-wide rather than local in order that all of the citizens of Indiana might be benefited.⁴⁰

³⁶ Robert E. Neff (Administrator, June, 1914 to June, 1928), "The General Hospital as a Factor in Social Work," *Proceedings of the State Conference of Charities and Correction*, 1922; *Indiana Bulletin of Charities and Correction* (June, 1923), p. 103.

³⁷ "In the care of the patient it is very important that determinations should be made of the social, economic, and environmental conditions involved, which undoubtedly are contributory to the individual problem. Accurate diagnosis and skillful treatment are dependent in large measure on the proper evaluation of these factors. In this connection comes the need of well trained social workers—workers who are qualified to obtain the proper knowledge regarding the patient's conduct and environment and make a thorough examination into his social condition. It is essential and quite logical to expect, that social examination and treatment should be a part of the hospital care of every patient" (*ibid.*, p. 104).

³⁸ Edna C. Henry (Director Social Service Department, Indiana University), "After-Care," *Proceedings of the State Conference of Charities and Correction*, 1917, *Indiana Bulletin of Charities and Correction* (June, 1918), p. 237.

³⁹ Indiana University, *Report of the Social Service Department for 1911-1912 and 1912-1913*, p. 3.

⁴⁰ *Ibid.*, p. 5.

In November, 1914, the social service work was made a separate department of the College of Liberal Arts of Indiana University, but its service functions were unchanged. It was authorized to offer courses in social service and was permitted to choose its own patients in both dispensary and hospital. "It was hoped that this would enable the worker to do more for State patients and to drop part of the local burden or to utilize it at once for teaching."⁴¹ With the opening of the Robert W. Long Hospital the department took over the social work for the patients of that institution. The main social service office was moved to the hospital in 1915, but another small office was retained in the City Dispensary. This move was in accordance with the conviction that the business of the Department of Social Service was to teach and to look out for the patients of the whole state, and that the attention of the workers should be devoted largely to the new hospital.⁴² The primary emphasis in the development of the Social Service Department was placed upon its value in teaching medical students and social-work students.

Important as the functions of medical social service may be in the relief of the sufferings of the sick poor, yet this new movement finds a still greater field of usefulness among the medical students themselves. If the Social Service Department helps one patient, then one patient has been helped; but if this department teaches one medical student how best to help that patient, then it has indirectly helped many of the patients whom this student may later treat. In widely distant localities and for many years its influence will be extended by these medical graduates.⁴³

The medical students were given experience in this department because of the insight given to them in the treatment of patients, and also because of the value to them for future service on boards of health in the interest of the prevention of disease. During its first year of service in its new quarters the department reported that in addition to a staff of paid workers, volunteers, social service students, and student nurses, it received service from twenty-two medical students. Their service was given on a volunteer basis as an asset to their professional training.

⁴¹ *Ibid.*, June 15, 1913-September 30, 1915, p. 11.

⁴² *Ibid.*, pp. 12-13.

⁴³ Charles P. Emerson, "The Value of Social Service to the Medical Student," *ibid.*, 1911-1912 and 1912-1913, p. 45.

When Riley Hospital was established, provision was made for the establishment of a social service department as one of the essentials for "conserving the health of the children of the state."⁴⁴ The department of social work of the University Hospitals grew and developed with the growth of the hospitals, its work varying in accordance with changes in the policies of the hospitals and changes in the personnel of the department. In 1931 the staff consisted of a professionally equipped director and four medical social workers, and one clerical worker.⁴⁵

Obviously one of the great needs of these hospitals has been an adequate follow-up system for discharged patients. With the assistance of the social service department a plan of contact with the medical profession of the state and with the patient's community was developed at Riley Hospital. Following the discharge of the patient the physician who has examined the patient at the time of his admission is informed concerning the findings and treatment. A summary of the case is sent with the suggestion that convalescent and post-hospital care be supervised and that the hospital be notified if the patient is not making a satisfactory convalescence. Thus the hospital considers itself more or less in the position of a consultant for the local physician in the matter of handling specialized cases. A report is also sent to the judge who committed the child to the hospital, and a letter with necessary instructions in simple terms is dispatched to the parent or guardian of the child. The hospital, when it first opened, depended upon the social service department to follow up and supervise the care of furloughed and discharged patients. As about 50 per cent of the patients discharged from the hospital were furloughed with instructions to return for further treatment at a specified time the hospital considered this follow-up care of the social service department most important. The furlough is a great factor in shortening the patient's stay in the hospital, and every effort is made to send the child to his normal environment if

⁴⁴ Burns (1926), § 7153.

⁴⁵ Information obtained from Miss Edith Eickhoff, former director of social service, Indiana University Hospitals. Due to reductions in the hospital budget this department has, since June, 1932, been reduced to a skeleton staff of two clerical workers and a student from the University School of Social Work, who is in charge of the work.

social investigation reveals that the proper facilities are available there.⁴⁶

This service can be handled by correspondence when the patient comes from communities where there are well-organized agencies, but becomes ineffective when this means is used to follow up patients in 92 different counties where there are often no resources for social treatment. This question of after-care has been one of the problems most difficult of solution to the state university hospitals in other states as well as in Indiana, and remains for the most part unsolved. Considerable thought and attention were given to providing this service by the social service department. "The theory of the State work is that it should further the care and cure of certain patients of the Robert W. Long Hospital and extend needed social service for them to the homes and communities from which they come."⁴⁷ A "state worker" was sent out from the department to visit the patient in his home, to study and create resources in all parts of the state. After an initial visit the work was carried on mostly by mail. During the first two years (June 15, 1914, to April 1, 1916), the worker visited 62 towns in different parts of the state. She enlisted the interest and assistance of local social organizations, health agencies, women's clubs, men's service clubs, church and school organizations, township trustees, local physicians, and so forth, to help develop a system of service for patients needing social follow-up.⁴⁸ During the three years from October, 1915, to October, 1918, the state worker continued her efforts to establish further resources and build up a system of follow-up. She followed in this time 2,737 cases and visited 185 towns. The Department of Social Work considered this one of the most important branches of its service.⁴⁹

No recent information is available concerning the development of this system of follow-up of patients in small communities beyond the statement that the follow-up of patients from Riley Hospital is done by the 73 Kiwanis clubs in the state.⁵⁰ It would be interesting to

⁴⁶ Robert E. Neff, "The James Whitcomb Riley Hospital," *Modern Hospital*, pp. 7-8. Vol. XXVI, No. 6.

⁴⁷ Indiana University, *Report of Social Service Department for 1913-1915*, p. 42.

⁴⁸ *Ibid.*, p. 46. ⁴⁹ *Ibid.*, September 30, 1915-September 30, 1918, pp. 8-11.

⁵⁰ Fifield, *op. cit.*, p. 348.

know something of the work done by these clubs, the personnel who handle the work, and the reports made to the hospital. But this still leaves the discharged patients from Long and Coleman Hospitals unaccounted for. The after-care of a hospital patient is a "responsibility which cannot be neglected." The real object of treatment must be complete cure which should include the after-care of the patient and the solution of his social problem. "The responsibility of a hospital to its patient does not cease when the patient goes out its doors" but must continue until he has made a complete recovery and is re-established in his normal social relationships.⁵¹

FURTHER NEEDS

Though Indiana has taken a step forward in assuming responsibility for state care for the destitute sick, there are more steps to be taken. The facilities are inadequate for the needs and there remain difficulties of administration still to be removed before the service can reach the zenith of its usefulness. There are still groups of the sick unprovided for. Owing to the lack of sufficient accommodations the public hospitals do not provide service for the indigent, chronically ill patient. The only place where he can be cared for is the county asylum. One familiar with the situation in Indiana called attention to this need more than ten years ago.

It costs about twice as much to carry a patient in a general hospital with its elaborate and costly equipment for the scientific care of the sick, as it does to provide care for the chronically ill in an establishment devoted entirely to this class of cases. Why not establish hospitals for the care of the hopelessly ill? Speed the day when Indiana will have sufficient beds to care for the permanently afflicted, either in its general hospitals or in institutions devoted to the care of this type of patient. The need is most urgent. The community should assume a responsibility in the case of the hopelessly ill as well as the acutely ill. The state cannot escape the responsibility in this direction.⁵²

One big chronic hospital in Indiana could be administered more economically than 92 independent infirmaries of the county asylums, unequipped to care for these unfortunate people. Such an institution, however, would present the difficulty of hospitalizing patients

⁵¹ Robert E. Neff, "The General Hospital as a Factor in Social Work," *op. cit.*, p. 105.

⁵² *Ibid.*, p. 104.

with chronic ailments for long periods of time in an institution, in many instances, far removed from home and friends. A plan whereby smaller institutions could be established in different parts of the state would be a happier solution of the problem. It would be interesting to inquire into the possibility of utilizing, for this purpose, some of the small public hospitals which operate at a low percentage of their capacity.

The hospital must likewise accept greater responsibility for health activities and for the advancement of public health through preventive and curative medicine, as the center of "social provision for illness." Indiana, long ago, accepted the principle that professional medical care should be furnished to those in need of it regardless of their financial circumstances. The community must assume the responsibility in the prevention of preventable disease and illness and must carry the burden which the individual cannot carry. Physicians accustomed to the facilities of a hospital are inclined to set up their practice where such facilities are available, leaving the small communities unsupplied with expert medical service.⁵³ Only the state is a large enough governmental unit to make available to its citizens a uniform type of expert medical care, and upon it must rest the responsibility of providing care for its sick poor.

⁵³ *Ibid.*, p. 105.

PHYSICIAN'S REPORT AND APPLICATION FOR ADMISSION

ROBERT W. LONG HOSPITAL OR WILLIAM H. COLEMAN
HOSPITAL FOR WOMEN

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THE INDIANA POOR LAW

Form 6-R-1000-10-28 (Approved by State Board of Accounts)

EXHIBIT D

INDIANA UNIVERSITY
JAMES WHITCOMB RILEY HOSPITAL FOR CHILDRENTO THE JUDGE OF THE.....COURT, IN AND FOR THE
COUNTY OF.....STATE OF INDIANA.

IN THE MATTER OF.....

A CHILD AFFLICTED WITH A DEFECT, DISEASE
OR DEFORMITY PRESUMABLY CURABLE OR
IMPROVABLE } PETITION

TO THE JUDGE OF.....COURT:

Comes now.....and alleges that.....

.....is a child under sixteen (16) years of age and is
afflicted with a defect, disease or deformity presumably curable or improvable
by skilled medical and surgical treatment, or needing special study by surgical
and medical treatment and hospital care for diagnosis in the James Whitcomb
Riley Hospital for Children, and that said child has a legal residence in said
county and state and that the person having the legal custody of said child
is.....and is the.....of said child,

(Parent or Guardian)

and that the person or persons legally chargeable with the support of said child
are unable to provide means for his or her surgical and medical treatment and
hospital care.WHEREFORE, Your petitioner prays this Court to order the Clerk of the Court
to make application for the admission of said aforementioned child to the James
Whitcomb Riley Hospital for Children, and to provide some suitable person to
accompany and deliver said child to said Hospital, and any further orders that
may be necessary and proper in the premises.STATE OF INDIANA,
COUNTY OF..... } SS:.....being first duly sworn, on oath
states that he is the petitioner herein and is legal resident of said county; that
he has heard read the foregoing petition and knows the contents thereof and
that the statements and allegations herein contained are true as he verily
believes.Subscribed in my presence and sworn to before me this
day of....., 19.....

Clerk of the Circuit Court

Do not send to hospital. Keep in county files.

THE INDIANA UNIVERSITY HOSPITALS

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EXHIBIT E

Form 7-R-1000-10-28 (Approved by State Board of Accounts)

INDIANA UNIVERSITY

JAMES WHITCOMB RILEY HOSPITAL FOR CHILDREN

TO THE JUDGE OF THE.....COURT, IN AND FOR THE
COUNTY OF....., STATE OF INDIANA.

IN THE MATTER OF.....
A CHILD AFFLICTED WITH A DEFECT,
DISEASE OR DEFORMITY PRESUMABLY } REPORT OF PHYSICIAN
CURABLE OR IMPROVABLE.

TO THE JUDGE OF.....COURT:

The undersigned, having been appointed by the court to examine.....
.....with respect to his alleged malady or deformity,
respectfully states that he has made such examination and finds said.....
.....to be suffering from a malady or deformity which can
probably be remedied by surgical and medical treatment and hospital care.

That herewith submitted to the court is a detailed report in duplicate showing the history of the case as obtained by the undersigned and the results of his examination.

.....
Physician

Do not send to hospital. Keep in county files.

EXHIBIT F

Form 8-R-1000-10-28 (Approved by State Board of Accounts)

INDIANA UNIVERSITY

JAMES WHITCOMB RILEY HOSPITAL FOR CHILDREN

IN THE MATTER OF.....
A CHILD AFFLICTED WITH A DEFECT, DISEASE
OR DEFORMITY PRESUMABLY CURABLE OR } ORDER
IMPROVABLE.

TO THE JUDGE OF.....COURT:

AND NOW TO WIT, on this.....day of....., 19.....,
this matter coming on for hearing, the petition and other pleadings and the
report of the physician appointed to examine said child, having been examined,
and all the evidence having been considered, and being fully advised in the
premises, it is found that the said.....is a child under
the age of sixteen (16) years and is a legal resident of said county and state and

THE INDIANA POOR LAW

Form 6-R-1000-10-28 (Approved by State Board of Accounts)

EXHIBIT D

INDIANA UNIVERSITY
JAMES WHITCOMB RILEY HOSPITAL FOR CHILDRENTO THE JUDGE OF THE.....COURT, IN AND FOR THE
COUNTY OF.....STATE OF INDIANA.IN THE MATTER OF.....
A CHILD AFFLICTED WITH A DEFECT, DISEASE
OR DEFORMITY PRESUMABLY CURABLE OR
IMPROVABLE } PETITION

TO THE JUDGE OF.....COURT:

Comes now.....and alleges that.....
.....is a child under sixteen (16) years of age and is
afflicted with a defect, disease or deformity presumably curable or improvable
by skilled medical and surgical treatment, or needing special study by surgical
and medical treatment and hospital care for diagnosis in the James Whitcomb
Riley Hospital for Children, and that said child has a legal residence in said
county and state and that the person having the legal custody of said child
is.....and is the.....of said child,
(Parent or Guardian)

and that the person or persons legally chargeable with the support of said child
are unable to provide means for his or her surgical and medical treatment and
hospital care.

WHEREFORE, Your petitioner prays this Court to order the Clerk of the Court
to make application for the admission of said aforementioned child to the James
Whitcomb Riley Hospital for Children, and to provide some suitable person to
accompany and deliver said child to said Hospital, and any further orders that
may be necessary and proper in the premises.

STATE OF INDIANA, }
COUNTY OF..... } ss:

.....being first duly sworn, on oath
states that he is the petitioner herein and is legal resident of said county; that
he has heard read the foregoing petition and knows the contents thereof and
that the statements and allegations herein contained are true as he verily
believes.

Subscribed in my presence and sworn to before me this.....
day of....., 19.....

Clerk of the Circuit Court

Do not send to hospital. Keep in county files.

THE INDIANA UNIVERSITY HOSPITALS

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EXHIBIT E

Form 7-R-1000-10-28 (Approved by State Board of Accounts)

INDIANA UNIVERSITY

JAMES WHITCOMB RILEY HOSPITAL FOR CHILDREN

TO THE JUDGE OF THE.....COURT, IN AND FOR THE
COUNTY OF....., STATE OF INDIANA.

IN THE MATTER OF.....
A CHILD AFFLICTED WITH A DEFECT,
DISEASE OR DEFORMITY PRESUMABLY } REPORT OF PHYSICIAN
CURABLE OR IMPROVABLE. }

TO THE JUDGE OF.....COURT:

The undersigned, having been appointed by the court to examine.....
.....with respect to his alleged malady or deformity,
respectfully states that he has made such examination and finds said.....
.....to be suffering from a malady or deformity which can
probably be remedied by surgical and medical treatment and hospital care.

That herewith submitted to the court is a detailed report in duplicate showing the history of the case as obtained by the undersigned and the results of his examination.

.....
Physician

Do not send to hospital. Keep in county files.

EXHIBIT F

Form 8-R-1000-10-28 (Approved by State Board of Accounts)

INDIANA UNIVERSITY

JAMES WHITCOMB RILEY HOSPITAL FOR CHILDREN

IN THE MATTER OF.....
A CHILD AFFLICTED WITH A DEFECT, DISEASE
OR DEFORMITY PRESUMABLY CURABLE OR } ORDER
IMPROVABLE. }

TO THE JUDGE OF.....COURT:

AND NOW TO WIT, on this.....day of, 19.....,
this matter coming on for hearing, the petition and other pleadings and the
report of the physician appointed to examine said child, having been examined,
and all the evidence having been considered, and being fully advised in the
premises, it is found that the said.....is a child under
the age of sixteen (16) years and is a legal resident of said county and state and

is suffering from the deformity or malady as shown by the report of said physician, and that the same can probably be remedied by surgical and medical treatment and hospital care and the parents or other persons legally chargeable with the support of such child are unable to provide means, therefore this order shall be made and entered and that the said child shall be committed to the James Whitcomb Riley Hospital for Children at Indianapolis, Indiana, for medical and surgical treatment and hospital care, for the malady or deformity as shown by the report of said physician, or as found by the physician or surgeon in charge of the clinic to which said child shall be assigned for surgical or medical treatment.

It is, therefore, ordered that the said.....be and is hereby committed to the James Whitcomb Riley Hospital for Children at Indianapolis, Indiana, for free medical and surgical treatment and hospital care, there to be treated and dealt with according to the best judgment of the Hospital authorities, and.....is hereby appointed to
(Name and Mailing Address)

accompany said child to said hospital, and the clerk will issue commission accordingly.

It is further ordered that claims for costs and expenses of this proceeding be filed and paid as provided by said Act.

.....
Judge

(Over)

SEND TO HOSPITAL

.....
[Reverse Side of Form]

APPLICATION FOR ADMISSION

TO THE ADMINISTRATOR OF THE JAMES WHITCOMB RILEY HOSPITAL FOR CHILDREN:

Application is hereby made for the admission of.....
to the James Whitcomb Riley Hospital for Children in accordance with the attached order of the court accompanied by the physician's report.

.....
Clerk

County of.....

(Over)

THE INDIANA UNIVERSITY HOSPITALS

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EXHIBIT G

Form 9-R-1000-10-28 (Approved by State Board of Accounts)

INDIANA UNIVERSITY

JAMES WHITCOMB RILEY HOSPITAL FOR CHILDREN

STATE OF INDIANA, }
COUNTY OF } SS:

TO GREETINGS:

Whereas, The proceedings necessary to entitle.....

.....
of said County to be admitted into the James Whitcomb Riley Hospital for
Children have been had according to law, and in compliance with the Court's
order issued in said cause;

You are hereby appointed to accompany and deliver said child to said
Hospital and make proper return to this office.

Witness my hand and seal of the.....Court,
this.....day of....., 192.....

.....
Clerk

JAMES WHITCOMB RILEY HOSPITAL FOR CHILDREN
INDIANAPOLIS, INDIANA

Received this.....day of....., 192....., the afore-
named patient.

.....
Administrator

This form should be sent to the hospital with the judge's commitment order
(Form No. 8) and the physician's report blank (Form No. 10).

SEND TO HOSPITAL

(To be returned to County Files)

.....
In the Matter of

.....
A child afflicted with a Defect, Disease, or Deformity, presumably curable or
improvable
.....
.....

THE INDIANA POOR LAW

COMMITMENT AND DELIVERY

FILED

RETURN ON DELIVERY

Came to hand....., 192....., and having accompanied and delivered the within named.....to the James Whitcomb Riley Hospital for Children, as shown by the administrator's receipt herein endorsed, I hereby submit the following expense account:

Railroad fare, self
 Railroad fare, patient.....
 Hotel bill.....
 Meals.....
 Other necessary expense.....

Subscribed and sworn to before me, the undersigned, this.....day of....., 192.....

.....
 Clerk of the Circuit Court

EXHIBIT H

Form No. 10-R-278; I.U.P. 3015:2M

INDIANA UNIVERSITY
JAMES WHITCOMB RILEY HOSPITAL FOR CHILDREN
PHYSICIAN'S REPORTTO THE JUDGE OF THE.....COURT, IN AND FOR THE
COUNTY OF....., STATE OF INDIANA:
IN THE MATTER OF.....A CHILD AFFLICTED WITH A DEFECT,
DISEASE OR DEFORMITY, PRESUM- } PHYSICIAN'S REPORT
ABLY CURABLE OR IMPROVABLE. }

Date....., 19.....

Patient's name..... Address.....

(Last Name) (First Name)

Age..... Sex..... Race..... Birthplace.....

Chief complaint at present.....

Name of parent or guardian.....

Address..... Phone No.....

(Street and City)

Please describe case briefly, indicating as much family history as possible.....

Does the child appear to be of average intelligence?.....

Has the child ever had convulsions?.....

Has the child been exposed to any contagious or infectious disease recently?

If so, what disease and when exposed?.....

Is the child bedfast at present?.....

Is the case presumably curable or improvable?.....

Probable diagnosis.....

Duration of present illness.....

Condition at present.....

Remarks:.....

Signature..... M.D.

(SEND TO HOSPITAL) Address.....

CHAPTER V

CONCLUSION

A perusal of early records of the administration of poor relief reveals scant mention of special consideration of care for the sick poor as a group, but a study of specific cases shows that a large portion of relief was expended for service to the sick. One group after another, the insane, the children, the feeble-minded, the juvenile delinquent, were taken from the heterogeneous population of the poor farms and given individual attention, but the sick continued to be a part of the indiscriminate burden of local poor relief. With the growth of preventive medicine increasing recognition has been given to the relationship between pauperism and disease. There is evident a growing consciousness that the sick must be extracted from the undifferentiated mass of the destitute and be supplied with medical care as a preventive measure for the general welfare. The investigation of the costs of medical care has met with an interested response from the people of the country but to no group has it been of more vital interest than to the social workers. To them it is no news that illness often brings destitution in its train; that facilities for general hospital care are inadequate; that rural areas have a paucity of resources for the sick poor; and that as a rule the only care available for convalescents and the chronic sick is the poor farm.

An interesting trend in recognition of the need of a uniform type of medical service of high grade for the sick poor of the state is seen in the growth of the university hospital in 18 states in different parts of the country. The trend is especially evident in certain states of the Middle West, and Indiana is representative of this group.

A study of the early history of Indiana shows that the state was founded by people who were poor in material possessions and depended largely upon neighborly assistance in time of distress and adversity. Not the least of the misfortunes with which they had to contend was the prevalence of illness superinduced by exposure and

the miasma of the swamplands.¹ Whole communities were laid waste by disease, as preventive measures were lacking and medical facilities for care were rare and inexpert. There were few doctors and those few were often untrained. Medicines were scarce and prohibitive in price to most of the poor settlers, and access to the small communities was almost impossible in bad weather.² It is little wonder that the people learned to depend upon each other for help, and that, as the state government developed, they looked to it as a resource for assistance.

From its very beginning the state showed certain tendencies toward centralized responsibility for the common welfare. The ideals of the people as represented in the state Constitution outstripped their powers of accomplishment.³ Their legislation has continued to keep in advance of their administration. Breaking away from the traditions of the Northwest Territory they extended relief to the sick or distressed stranger within their boundaries. Early in their history they appealed to the federal government to provide hospitals for their sick inhabitants and their non-residents. Rejecting the township as the governmental units responsible for poor relief they placed the authority in the county officials. At the close of the nineteenth century supervision of all charitable and correctional activities in Indiana was vested in state officials.

In Indiana it has always been widely held that the people should have the best possible medical care regardless of their financial circumstances. The system of employing "the best doctor in the county" has been fraught with difficulties and has failed to supply the desired expert service. With the increasing use of hospitals for care of the sick the best doctors tend to establish themselves where access may be had to hospital facilities, and the sparsely settled communities are left to the ministrations of less experienced physicians. Thus the quality of medical care available to people of different parts of the state through local resources lacks uniformity. The system has also been expensive and sometimes subject to abuse. The quality of service at best can be only as good as the community affords, and even then the doctor's service must be restricted by the kind of hospital and laboratory resources offered by the community.

¹ *Supra*, p. 111.

² *Supra*, p. 116.

³ *Supra*, pp. 119-20; p. 154.

In a few instances use has been made of the facilities of the private hospital, but these are available only in urban centers.⁴

The small county hospital has solved the problem to a certain extent for some of the counties in which a small town is located, but such hospitals cannot afford the expensive equipment of a large institution. Then, too, less than a third of the counties have general hospitals for their citizens. The remainder must depend for local care either upon the private physician or the county asylum. This latter institution is the only resource for convalescent care and for chronic cases.⁵ Although attempts have been made to modernize many of these county asylums and to provide adequate medical service, they are, after all, not planned for hospital but for domiciliary care. And many of them still remain a disgrace to their local communities.

Some few services are given to the sick poor by the state and local health boards, but the effectiveness of these bodies is much restricted by lack of funds to employ qualified health officers and to carry on a successful campaign for the prevention of disease and protection of the public health.⁶

Though defeated in the effort to supply needy citizens with the best medical care, Indiana has kept up the attempt to find a solution of the problem. Spurred on by the generous and humane citizens who made possible the establishment of the University Hospitals the state assumed the responsibility of furnishing the expert medical service which for three quarters of a century had been attempted through a county system. Recognizing the obstacles to making available to the sick a uniform type of service for the inhabitants of 92 counties varying in size, population, and wealth, responsible state authorities took up the burden of maintaining the University Hospitals in order that the citizens of the state should have the best possible medical care.

The matter of gifts of private funds to public agencies in the interest of the welfare of the citizens of the state is of special interest as it is the antithesis of the system of the subsidizing of private agencies with public funds. Indiana has always opposed the latter policy in regard to state funds, and has made little use of it with local funds.

⁴ *Supra*, pp. 128-29, 138-42.

⁵ *Supra*, pp. 134-36.

⁶ *Supra*, pp. 142-47.

But the idea of private contributions to public projects is neither new nor unique in Indiana. Many of the local communities owe their public hospitals to donations from "public-spirited" citizens. What the implications of such a system may be it is difficult to say. It is possible that the private contributors might have considerable weight in shaping policies of the hospitals and in influencing the types of service and standards of care. There is, for example, the advisory committee of the Riley Memorial Association, which serves jointly with the trustees of the university in managing Riley Hospital. There are gifts made by service clubs, like the "Kiwanis Wing" of the hospital, and by individuals, like the Ball Gymnasium, and special services, like the occupational therapy equipment and service furnished by the Junior League. It seems likely that such contributors could, if they so desired, have great influence upon the services of the hospital. Whether that influence would be for the best interests of the indigent patients would depend upon the attitude of the individual or of the organization. The system undoubtedly has elements of danger as well as of advantage for the people concerned. The generosity of private citizens might discourage the state from assuming its full share of responsibility.

The regulations admitting pay, part-pay, and free patients to the hospitals is an interesting feature which offers the same type of care to all citizens of the state regardless of financial circumstances. This move to utilize the State University Medical School to care for its sick poor removes the stigma usually attached to the old poor law and preserves the self-esteem of the people forced by illness to seek aid from the state government.

Desirable as this method appears to be, the scheme is still in the process of development and presents certain difficulties of administration. In the first place, the usefulness of these facilities to the counties increases largely in proportion to their proximity to the hospitals, and decreases with their distance. The small counties in the far southeastern and southwestern corners of the state derive least benefit from them.⁷ A problem to be considered in connection with these more remote counties is the matter of additional expense for transportation paid for by county or township funds which might

⁷ *Supra*, pp. 166-70.

be used for local medical care. The distance from home may entail a long separation between members of a family—children taken away from the family group, the home deprived of a solicitous wife and mother, a father chafing at long hospitalization without the companionship of his wife and children. The effect of long periods of separation upon family life and family relationships needs careful consideration in regard to the provision of medical care.

The extent to which these advantages are made available to the poor depends upon the social developments of the community and the informed attitude of the local township and county officials. The absence of published reports from the administrative office and from the social service department of the hospitals makes it impossible to form a fair estimate of their value to people of the state as a whole. It is a source of regret that the Board of State Charities issues reports on hospital population, and on costs and expenditures of these institutions, but makes no mention of the proportion of free and part-pay patients, no evaluation of the service to the sick poor, and no discussion of the activities of the social service department or suggestions for its further fields of usefulness.

A study of the local set-up for taking advantage of these facilities would be most enlightening; of the methods used by judges in committing children to Riley Hospital and of their selection of doctors for examination of patients; of the use made of the hospitals by the various counties; of the follow-up work which is done by the local communities; and of the local resources for carrying out the hospital recommendations for medical and social treatment. A critical judgment of the system without such a study is impossible. However, it would appear from information available that an adequate system of follow-up throughout the state, co-ordinated and supervised by the social service department of the hospitals, would insure a more lasting benefit to the patients and at the same time serve to increase the efficiency of the hospital by avoiding undue delay in discharge of patients and unnecessary rehospitalization.⁸ Such a system would probably alleviate somewhat the serious congestion caused by the lack of adequate facilities for care.

Indiana has by no means solved the problem of adequate care for

⁸ *Supra*, pp. 173-75.

the sick poor, but it is attacking it from an interesting angle. It is difficult to think of any other plan which would be more logical to supply this state-wide service than the medical center composed of the State School of Medicine and the University Hospitals. Although the state has made an effort almost from its beginning by means of legislation to insure expert care, it has been impeded in its progress at times by faulty administration and short-sighted economies which have sacrificed ultimate benefits for immediate savings. The facilities of the University Hospitals are utterly inadequate to care for the demands made upon them; there are no resources except the poor asylums for care of convalescents and the chronic sick; the boards of health are crippled by lack of funds so that they cannot develop preventive and protective measures for the public health. But Indiana has started a nucleus for state care of the sick poor which makes possible a type of medical care uniform in quality for the inhabitants from all parts of the state regardless of their financial circumstances.



I. MEMORIALS TO THE UNITED STATES CONGRESS

1. A MEMORIAL TO THE CONGRESS OF THE U.S. ON THE SUBJECT OF ASYLUMS, AND FOR LANDS TO CONSTRUCT THEM

(Approved December 31, 1830)¹

The general assembly of the state of Indiana, as your memorialists, desires to lay before your honorable body, her views in regards to a subject not less addressed to the interest and humanity of all the states in the confederacy, as a common benefaction, than emphatically regarded by the constitution of this state, as specially demanding the interpositions of her legislature. Though Indiana is bound by her charter, to provide farms for asylums for the poor, infirm, and unfortunate within the poles of her jurisdiction, she would without such injunction, rejoice at every successful effort at home or abroad, tending to alleviate the distresses of this class of mankind. Under these convictions, she would respectfully submit to the Congress of the United States her request, that an act may be passed granting one section of land for each county in the state, to be selected by her; which, or its proceeds shall be applied to erect asylums and provide farms to receive all persons found to be objects of charity, and also granting 2 sections, to be located in like manner, to be applied to the benefit of the deaf and dumb within her entire boundaries; and also granting 1 section, in like manner, to erect and sustain a state lunatic asylum.

In making this appeal, the state of Indiana repudiates the idea of selfishness, and wishes to be understood as desiring only to take upon herself the responsibility of an agent, empowered to minister consolation to all whom casualty or misadventure may render dependent on benevolent protection.

This general assembly wishes not to stop at the limits of the request now made, but to express a hope that all the western states, having unsold lands within their jurisdiction, may apply for and succeed in obtaining similar grants to those applied for in this memorial. When this shall take place, the humane institutions they will foster, may be considered as much the common property of the whole union, and must be so in effect, as when they formed a part of the yet unclaimed general domain. The annual discharges of population from the old states, to those recently formed, must, in the nature of things, furnish many objects calling for the exertion of the trust estate confided to our care in such a manner as to display a union of philanthropy. Indeed, when it is considered that the unacclimated are necessarily more exposed to casualties of every descrip-

¹ *Special Acts of Indiana* (1830-31), chap. cxlvii, p. 188.

tion; and more liable to fall victims to the assaults of the season, than the native, or old settler, the request herein made, may justly be viewed as tending only to induce a provision for ameliorating the condition of the distressed of the whole American family, whose necessities require aid.

It is conclusive that the amount of lands asked for by this Memorial, cannot be more appropriately applied, than to the objects referred to, and all the sympathies of our nature advocate the gift.

Resolved, That our senators in congress be instructed, and our representatives requested, to obtain the objects of this memorial.

Resolved, That the governor forward copies of the same to each of our senators and representatives.

2. A JOINT MEMORIAL ON THE SUBJECT OF NATIONAL HOSPITALS²

(Approved December 20, 1834)

Your memorialists, the General Assembly of the state of Indiana, would respectfully represent, that suitable hospitals for the sick at convenient points on the Ohio River in the state of Indiana, are at this time greatly needed, both by humanity and policy. The great numbers of poor and distressed boatmen and others engaged in navigating the Ohio, who are constantly thrown destitute upon her banks, has become excessively burthensome to those inhabiting her borders. Indeed, in some instances, for want of suitable receptacles, as well as the small population in some places, that aid which their situation calls for, cannot be bestowed. That this evil must rapidly increase, it is only necessary to reflect upon the increasing commerce upon the waters of the Ohio, and the great exposure which those engaged in it are obliged to endure.

Probably three millions of people are directly interested in this commerce. When the citizens of western New York, Virginia, Pennsylvania, Ohio and Indiana descend with the produce and manufactures of their country, they descend from a higher to a lower latitude, and as the commerce is chiefly carried on in the spring, early in the summer, or in the beginning of autumn, they are of course exposed to great heat, all the causes of disease generated in a southern latitude by means of a warm sun acting upon moisture and decayed vegetation; and in the train of these follow the casualties common to all times and seasons, to those employed in navigating rivers, such as boats getting aground, the snagging and sinking of boats, the bursting of boilers and scalding by steam and hot water, and the crush of boats at night against each other, by which the limbs and lives are often mutilated and destroyed. By these and other causes which this employment is liable to, thousands of sick and disabled persons are left to perish in cabins, or continue to float without the common comforts and conveniences which the poorest at home may enjoy.

² *Indiana Local Laws* (1834-35), pp. 271-72.

Among these are not a few buried in the sand or forest, who have left behind them kind friends, respectable families, and everything which wealth and good character can give.

Such being the case, your memorialists deem it superfluous to add any thing more to show the necessity of houses of reception and relief, at so many different points on the Ohio, as to permit the sufferers, by accident or decease, to be landed in due season, and treated with skill and kindness.

Your memorialists, in asking a donation for this purpose, have the satisfaction of knowing that they are not asking for their citizens alone, but for the citizens of all those states who make use of the waters of the Ohio, for the purpose of carrying their produce and manufactures to the common market: Therefore,

Be it resolved by the General Assembly of the State of Indiana, That our Senators and Representatives in Congress be requested to use their exertions, to procure the passage of a law appropriating such sums of money as may be necessary to establish hospitals at such points on the Ohio River in Indiana, as may afford relief to such sick and disabled persons as navigate said stream.

And be it further resolved, That the Governor of Indiana be requested to transmit a copy of this memorial, as soon as it shall be sanctioned by both branches of the Legislature to each of our Senators and Representatives in Congress.

3. ADDRESS TO TRUSTEES OF INDIANA UNIVERSITY³

INDIANAPOLIS, January 24, 1911

To the trustees of Indiana University:

GENTLEMEN:—For a long period of years, we, the undersigned, Robert W. Long and Clara J. Long, his wife, have had the fixed purpose of devoting the bulk of our property to the establishment of a hospital in the city of Indianapolis. After full consideration of the matter on all sides, we have reached the conclusion that we can accomplish this our purpose best, and so as to assure most certainly its permanent fulfillment, through the agency of the trustees of Indiana University in connection with the school of medicine of that university. We hope in this manner to be instrumental in establishing a hospital which shall prove useful to the people of Indiana in two ways, as follows:

First. By making it possible for worthy persons of limited means from all parts of Indiana to secure hospital advantages and the services of the best physicians in connection therewith, such as can now be had only by those residing in the cities where public hospitals are established.

Second. By providing clinical facilities for students of medicine in connection with the Indiana University school of medicine.

We are deeply interested in the first of these two objects because we realize that there are in all parts of Indiana many worthy men, women and children

³ *Indiana Laws* (1911), p. 15. See above, p. 156.

tion; and more liable to fall victims to the assaults of the season, than the native, or old settler, the request herein made, may justly be viewed as tending only to induce a provision for ameliorating the condition of the distressed of the whole American family, whose necessities require aid.

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Second. By providing clinical facilities for students of medicine in connection with the Indiana University school of medicine.

We are deeply interested in the first of these two objects because we realize that there are in all parts of Indiana many worthy men, women and children

³ *Indiana Laws* (1911), p. 15. See above, p. 156.

who could be relieved from a life of suffering and prepared to support themselves instead of being dependent upon the public, if they could afford to go to a good hospital. We desire to bring relief as far as possible to such persons and we believe that our purpose can be carried out best through the agency of the state university. We are deeply interested also in the betterment of medical education. We desire, therefore, that the hospital established by us shall be equipped and conducted in such a way as to be as beneficial as possible to medical science and to medical education. We feel that our purpose in this respect can best be carried out by the Indiana University in connection with its school of medicine. We have reason to believe that when the hospital which we propose to establish is under way it will be enlarged by gifts from others for the maintenance of special wards or departments, and that the hospital will become in larger and larger measure, as the years go on, a benefit to mankind. For the reasons set forth above, we the undersigned, Robert W. Long and Clara J. Long, his wife, propose:

(1) To execute a deed of trust to the State of Indiana, for the use and benefit of Indiana University for the establishment of a hospital as aforesaid, the following described real estate in Marion County, Indiana, to wit: Lots numbered one (1), two (2) and twenty (20) in Isaac Coe's subdivision of square numbered seven (7) in the original plat of the city of Indianapolis, being on southwest corner of Illinois and North Streets. As a further reference to the location of the above described real estate, see plat book one (1), page one hundred and forty (140) in the county recorder's office of said county and state; said property having the estimated value of one hundred and twenty-five thousand dollars (\$125,000): *Provided*, That the grantors are to retain and receive the rents and profits of said real estate until said Indiana University is properly authorized and is ready to proceed with the erection, establishment and maintenance of a hospital in connection with the Indiana University school of medicine, when said real estate shall be sold as soon as practicable. And after said real estate shall be sold for such purposes, said grantors or the survivor of them, shall receive any interest accruing until the proceeds shall actually be needed in constructing, establishing and maintaining such hospital.

(2) Also the following described real estate in Marion County, Indiana, to wit: A part of lots four (4), five (5) and six (6) in square fifty-nine (59) in the city of Indianapolis, bounded as follows: Beginning on the west line of the aforesaid lot six (6), at a point sixty (60) feet south of the northwest corner thereof, on the east side of Alabama Street, running thence east parallel with Market Street one hundred and forty-two and one-half feet ($142\frac{1}{2}$), thence south parallel to Alabama Street sixty-five (65) feet, thence west parallel with Market Street one hundred and forty-two and one-half feet ($142\frac{1}{2}$) to the west line of said lot six (6), and thence north on the said west line of lot six (6) sixty-five feet (65) to the place of beginning; said property having the estimated value of seventy-five thousand dollars (\$75,000): *Provided*, That the income from the

last above described real estate if we should so desire, shall be paid to us or to the survivor of us during our natural lives.

(3) To further endow said hospital from our respective estate: *Provided*, That the trustees of said Indiana University shall be duly authorized to and shall carry out the following conditions:

(1) Said trustees of Indiana University shall devote all property received from said Robert W. Long and Clara J. Long, his wife, or either of them, to the establishment and maintenance of said hospital in the city of Indianapolis in connection with the Indiana University school of medicine, so as to serve as far as possible the needs of worthy people of limited means throughout the State of Indiana, and so as to advance medical science and medical education: *Provided, also*, That not less than sixty per cent (60%) of the proceeds of all of the real estate above described shall be appropriated to the construction of the hospital buildings.

(2) That said hospital shall forever bear the name, Robert W. Long hospital of Indiana University.

(3) That said Robert W. Long shall be, during the remainder of his lifetime, chairman of the committee appointed by the trustees of Indiana University, to build and manage said hospital, and to sell and dispose of said real estate for such purpose: *And provided*, That the legislature of Indiana shall, during its session of 1911, make suitable provision for and shall accept and sanction by due process, the terms and conditions of said donations and bequests and their reception and management by the trustees of Indiana University, for the establishment and permanent maintenance of said hospital in connection with said Indiana University school of medicine, and shall pledge the faith of the state that said terms and conditions shall not be subject to repeal. But if the legislature of Indiana during its session of 1911 shall fail to accept and ratify the foregoing proposal, then said proposal shall be withdrawn, and the title to the real estate described therein shall revert to the grantors.

ROBERT W. LONG
CLARA J. LONG.

4. PROPOSAL OF GIFT BY WILLIAM C. COLEMAN⁴

To the Trustees of Indiana University:

I propose to give for the benefit of Indiana University school of medicine at Indianapolis, real estate located at the corner of Illinois and Vermont Streets in the city of Indianapolis, valued at \$175,000, which will be under ninety-nine years' lease bearing five per cent interest on that amount, with an increased rental each five years for three periods. I, also, will give property and securities to the amount of \$75,000 additional, making \$250,000 in all, for the purpose of building on the state's property at Indianapolis (near the Robert W. Long hospital), and to be used chiefly for lying-in patients and a smaller number of

⁴ *Indiana Laws* (1927), p. 607. See above, p. 161.

gynecological cases; provided that the trustees shall have authority, when all beds are not occupied for the above purposes, to use them for other classes of female cases according to their best judgment.

The proposed hospital is to be known as William H. Coleman hospital for women, and is supported by the state of Indiana and to receive for care and treatment both patients who are not able to pay and patients who are able to pay part or all of the expense of their care at such an institution.

The property included in this proposition will be subject to the taxes of 1924 and the income on the gift is to begin April 1, 1925.

The proposed hospital building is to be erected in 1925 if possible.

(Signed) WILLIAM H. COLEMAN

INDIANAPOLIS, INDIANA

December 16, 1924

II. JUDICIAL DECISIONS RELATING TO POOR RELIEF

The Board of Commissioners of Switzerland County

v.

Hildebrand¹

Provision for the poor, under the poor law, is a benevolence for which no reimbursement is to be collected.

ERROR to the Switzerland Circuit Court

PERKINS, J.: This was an action of assumpsit by the board of Commissioners of Switzerland county against Benjamin Hildebrand. The declaration contained three counts. The first was for the board and lodging of the wife of the defendant. The second was for the board, lodging, &c., of the wife of the defendant in the poor house of Switzerland county. The third was for the board, lodging, &c., of the wife of the defendant in said poor house, and alleged, in addition, that the defendant neglected and refused to provide for her. It did not state whether the neglect arose from poverty, from inability to provide support, or otherwise. There was a general demurrer to the whole declaration. The demurrer was sustained, and final judgment given for the defendant.

The first count in the declaration was bad. The commissioners of Switzerland county could not open a boarding house, and carry on the business of boarding, &c., for pay, at the expense of the county.

The second count was bad. The county commissioners could not convert the Switzerland county poor house into a boarding house for such as wished accommodations for pay.

The third count was bad. If Hildebrand's wife was a proper subject to be placed in the poor house, and, nothing appearing to the contrary, we must presume she was, from the fact of her being placed there by the overseers of the poor, (as is shown by the declaration,) no person is liable to the county for her support while there. And if she was not a proper subject for the poor house, then the act of placing her there was unauthorized, and the commissioners, according to the decision upon the first and second counts, could not sue for her maintenance. We consider the provision made for the poor of the state, as a charity which the public is bound to bestow. No authority is given by law to the commissioners of a county to sue, as in this case, for the support of a pauper.²

Per Curiam. The judgment is affirmed with costs.

¹ 1 Indiana 555 (1849).

² The following case is found in Chipman's (Vermont) Reports of 1790, which is in point:

Indebitatus assumpsit for the money laid out and expended.

Non-assumpsit pleaded.

It appeared in evidence that in the year —, the defendant was resident at Ben-

Gaston v. The Board of Commissioners of Marion County³

Where the statute provides a procedure for presenting a claim, including an appeal, and the claim is rejected under that procedure, it cannot be later presented by an ordinary suit at law.

ERROR to the *Marion* Circuit Court.

PERKINS, J.: Dr. *Gaston* sued the commissioners of *Marion* county for services rendered in a *post mortem* examination of the body of a deceased person, which examination was made upon the call of the coroner of the county. Judgment for defendant in the Circuit Court.

The case was submitted and decided upon the following agreement as to the facts:

"It is agreed that an inquest was held over the body of *James Smither* on the 14th of *March*, 1849, in the county of *Marion*, by *Peter Newland*, as the coroner of said county; and that he is the coroner of said county; that for the purpose of

nington, but not an inhabitant. The defendant, his wife, and two or three children, were taken sick, and in very distressed circumstances, being poor and unable to provide for themselves; the selectmen of *Bennington* provided for them as paupers and advanced for their relief the sum demanded in their declaration; the wife and one or more of the children died; the defendant, on his recovery, removed out of the state; returning afterwards on business, the present action was brought.

A motion was made that one of the plaintiffs, a selectman, might be sworn to prove a special agreement of the defendant to re-pay. *By the Court*.—He cannot be admitted.

The Chief Justice, in his charge to the jury observed, that this was an action the first of the kind, which he had ever known; an action brought by the town against a pauper to recover back money expended for his relief. There is in this case no special agreement to re-pay. It rests on the general implication of law in such cases. As the money was advanced, if the law implies generally an obligation on the part of the pauper to re-pay such moneys as the town may have advanced for his relief, then the plaintiffs ought to recover. This may be gathered from the intention of the law in the provision made for the relief of the poor.

The provision made by law for the relief of the poor, is, in my opinion, a charitable provision. To consider it in any other light, detracts much from the benevolence of the law, and casts a reflection on the humanity of the richer portion of community. Poverty and distress gives a man by law a claim on the humanity of society for relief; but what relief, if the town have a right immediately to demand repayment? And to imprison the pauper for life in case of inability to pay? This, instead of a relief, would be adding poignancy as well as perpetuity to distress. If this be so, certainly the law raises no promise.

Verdict for the defendant, *August* term, 1791. On a review, the defendant again had a verdict. *Selectmen of Bennington v. McGennes*, Chip. Vt. R. 45.

³ 3 *Indiana* 497 (1852).

enabling the jury to determine by what means the said *James Smither* (who it was supposed came to his death by poisoning) came to his death, it was necessary to have a *post mortem* examination of the body of said *Smither*, who had been dead and buried eight days; that the plaintiff was subpoenaed by said coroner for that purpose, and, failing to attend upon said subpoena, an attachment was issued for said plaintiff, who was accordingly attached and brought thereunder to *Pike* township, in said county, where said inquest was held; and there, under the direction of said coroner, made, with the assistance of others, the *post mortem* examination of said *James Smither*, deceased, and was there sworn as a witness in the case, and testified to said jury as a witness, and communicated to them the result of that examination, and his opinion of the means by which said *Smither* came to his death"; that the examination was fourteen miles from the residence and office of said *Gaston*, and occupied the space of two hours; that said *Gaston* had, previously to commencing this suit, filed his claim for compensation with the county commissioners who had rejected it, and no appeal had been taken; that at the time said *Gaston* made said examination he was one of the physicians employed by the county, at a given salary, to attend upon all county paupers; that if he is entitled to recover at all in this case, the judgment shall be for 25 dollars.

This agreement is signed by *Ketcham* and *Taylor* for the plaintiff, *R. L. Walpole* for the defendants.

The service rendered in this case by Dr. *Gaston* was not covered by his employment to attend upon the county poor. He was entitled to no compensation for that service so far as the traveling and giving testimony in obedience to the subpoena were concerned, beyond that of an ordinary witness. Physicians are not specially privileged in this particular. But the expenditure of labor and skill in the *post mortem* examination created a claim to additional compensation from some source. Either the coroner who procured the service, or the county, should pay for it.

We have no doubt that in a case where a *post mortem* examination is really necessary the coroner may, by his employment, bind the county to the payment for a sufficiency of professional skill to make the examination. To that extent, at least, he must be the agent of the county.

But whether the employment of the plaintiff in the present case was such as to entitle him to compensation from the county or not, we have not to determine. The agreement upon which the cause was submitted states that said plaintiff had, before the commencement of this suit, presented his claim for his service in said *post mortem* examination, in company with the claims of two other physicians, to the board of commissioners of *Marion* county, before whom it was docketed, heard, and decided against said plaintiff, all of which appears of record, and that no appeal had been taken from that decision.

That judgment of the commissioners bars this suit. The commissioners were

a Court having jurisdiction of the cause; it was brought before them in the manner pointed out by the statute, and their judgment, while unreversed, is conclusive. See the case of *The State v. Conner*, 5 Blackf. 325. It is not material that the claim was not brought before said commissioners in the manner of a formal suit at law. It was not necessary to give the commissioners jurisdiction that it should be so brought. See *Hart v. The Board of Commissioners of Vigo county*, 1 Carter's Ind. R. 309. And section 23, R. S. p. 184.

Per Curiam.—The judgment is affirmed, with costs.

Blythe v. The State⁴

The gratuitous services of an attorney cannot be demanded for a poor person's action. Such services must be reasonably compensated.

APPEAL from the Vanderburgh Court of Common Pleas.

STUART, J.: One *Rodgers* stood charged with larceny in the Common Pleas; and the Court being satisfied that the accused was entitled to his defence in *forma pauperis*, assigned *James E. Blythe, Esq.*, an attorney of the Court, as counsel to defend *Rodgers*. *Blythe* thereupon denied the right of the state, or of the Court, to demand his professional services without compensation, and thereupon refused to act. For such refusal the Court adjudged him guilty of a contempt, and ordered him to make his fine to the state in the sum of 5 dollars, and stand committed, &c. The facts are all set out in a bill of exceptions—whether strictly regular so as to forbid a disposition of the case without meeting the main question, it is not necessary to inquire.

So much of the 15th sect., p. 30, vol. 2. R.S. 1852, as requires the services of an attorney at law to prosecute or defend without fee, is in conflict with the 21st sect., art. 1, of the constitution, and void.

Blythe's refusal was not a contempt. *Per Curiam*.—The judgment is reversed. Cause remanded, &c.

Falkenburgh v. Jones⁵

The inability of a poor defendant to pay the fees required in supplying the record of his case on which to base an appeal is not an adequate reason for the clerk's refusing a transcript of the record. A mandamus to the clerk will therefore issue.

APPLICATION for a rule against the clerk of the *Tippecanoe* Circuit Court to show cause why a *mandamus* should not issue against him, &c.

HOVEY, J.: *Falkenburgh's* attorneys filed affidavits for a *mandamus* against *Mark Jones*, clerk of the *Tippecanoe* Circuit Court. At the *November* term, 1853,

⁴ 4 Indiana 525 (1853).

⁵ 5 Indiana 296 (1854).

of this Court, a rule was entered against said *Jones*, requiring him to show cause why a *mandamus* should not issue returnable at the succeeding term.

The facts shown by the affidavits and the answer to the rule, are, that *Falkenburgh* was indicted for grand larceny at the *August* term, 1853, of the *Tippecanoe* Circuit Court. That Court permitted him to defend in *forma pauperis*, and assigned him counsel. He was tried and convicted, and prayed an appeal to this Court; but *Jones*, as clerk of said Court, refused to deliver or send up a transcript of the record until *Falkenburgh* should pay him his fees for making the same.

Is *Falkenburgh* entitled to the transcript before payment of the clerk's fees?

Section 558, vol. 2, R.S. 1852, p. 159, provides, that upon the request of the appellant, and upon the payment of the proper fee, the clerk shall forthwith make out and deliver to the party, at his request, or transmit to the clerk of the Supreme Court, a transcript of the record in the cause, &c. This action is found in the article under the title of "Appeal in Civil Actions," but by section 6, vol. 1, R.S., p. 291, it is provided, that in criminal cases fees and costs shall be taxed and collected, as in other cases, from the person convicted.

From these sections the clerk would, as a general rule, be entitled to his fee before parting with the record; but by the 15th section, vol. 2, R.S., p. 30, it is enacted, that any poor person, not having sufficient means to defend an action, may apply to the Court in which the action is pending, for leave to defend as a pauper. The Court, if satisfied that such person has not sufficient means, &c., shall admit the applicant to defend as a poor person, and assign him an attorney, and all other officers requisite for the defence, who shall do their duty therein without taking any fee or reward from such person.

This section is merely declaratory of the common law. 1 Chitty's Crim. Law 413, 414.—*Rex v. Wright*, Strange 1041.

But there is a marked difference between the rights of the citizens of this state under our constitution, and those of *English* subjects under the constitution of *Great Britain*. Parliament, by their theory, being omnipotent, could command services without reward; but by the broad language of our constitution, "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in case of the state, without such compensation first assessed and tendered." Sec. 21, art. 1.

In the case of *Blythe v. The State*, 4 Ind. R. 525, section 15, *supra*, underwent adjudication, and this Court decided that said section, so far as it relates to requiring the services of an attorney without compensation, is in conflict with said 21st section of the constitution, and void. But this case can be easily distinguished from that, so far as it relates to requiring services without compensation.

An attorney is not now an officer known to the laws of this state, and, hence, his services can not be required without compensation, but officers entitled to fees or salaries fixed by law, take their offices *cum onere*, and have no legal right to complain, as they are at liberty to resign, at any time, and release themselves from their burthens. Their services are *official*, and not *particular*, within the meaning of the constitution.

If section 21, article 1, is to be so construed as to give officers a just compensation for their services, we might probably be under the necessity of changing the law in regard to salaries by judicial legislation, a task we will not undertake without being further empowered and enlightened on the subject.

But we think the law in this case has provided compensation. The 25th sec., 1 R.S. 229, enacts, that the boards of county commissioners shall annually allow the clerk of the Circuit Court, sheriff and auditor, an annual compensation for all extra services, as such, not exceeding 100 dollars each, upon their filing a detailed statement under oath, with the items and date, which allowance is to be in full for all extra and other services, where no certain fee is fixed by law.

The intention of the general assembly in enacting this section, was to provide for the payment of the necessary services of those officers, in cases where no fees could be legally charged, and the fact that specific fees can be charged for similar services, where parties do not prosecute or defend as paupers, will not prevent clerks from charging such fees against the county under said section; and in such cases, we think it is clear, that the county board can not be compelled to pay before the record is delivered to the pauper. The clause "no man's particular services shall be demanded without just compensation," does not require that such compensation shall be first paid or tendered. It is enough if provision has been made for payment. See construction of sec. 7, art. 1, constitution of 1816, in *Rubottom v. McClure*, 4 Blackf. 505, *The State v. Beackmo*, 8 Blackf. 247, *McCormick v. The President and Trustees of Lafayette*, 1 Ind. 52.

In arriving at our conclusions, we have felt constrained to give a liberal construction to our statutes in favor of the pauper, for we can scarcely conceive of a system of laws so inhuman and cruel that would consign the destitute and friendless to conviction and infamy, without affording full and ample means for investigation. Such a system would, in many cases, make poverty equivalent to crime; for without the means of procuring writs, witnesses and records, the innocent might, and frequently would be convicted; and that part of our constitution, which provides that "justice shall be administered freely and without purchase, completely and without denial," would be an empty boast, and worse than mockery to the poor.

Per Curiam.—It is ordered that said *Jones* file a transcript of said record with the clerk of this Court within thirty days, and that he pay the costs of this proceeding.

Webb, Auditor &c. v. Baird⁶

The court could demand the services of an attorney to defend a poor client and bind the county for the reasonable value of his services. The court was not, however, authorized to fix the amount to be paid.

APPEAL from the *Tippecanoe* Court of Common Pleas.

STUART, J.: Petition for a *mandamus* against *Webb* as auditor of *Tippecanoe* county.

It appears that in *April*, 1853, *Baird* filed in the Common Pleas his petition, verified, &c., setting forth that at the *February* term, 1853, of the *Tippecanoe* Circuit Court, under the order and by the direction of the said Court, he defended one *Thomas Wickens*, then indicted for burglary, *Wickens* being then in custody and destitute of means to employ counsel in his defence; for which service the Court, at the same time, entered of record an allowance of 25 dollars, which was ordered to be certified, &c.; that a demand had been made, &c.

On this petition the Common Pleas awarded the *mandamus*.

Webb, by way of return or answer to the mandate, admits that *Baird* is a practising attorney, and also all the several matters alleged; but shows for cause why he refused to draw the warrant on the treasurer in *Baird's* favor for the 25 dollars, that the Circuit Court had no authority, under the laws of the state, to order the relator, as an attorney at law, to defend *Wickens* at the expense of *Tippecanoe* county, and to order the relator to be paid out of the treasury thereof, &c.

To this return *Baird* demurred; the Court sustained the demurrer; and ordered the rule for issuing the warrant to be made absolute. *Webb* appeals.

Something is stated in the proceedings in relation to the laws of 1852 being in force and governing the case. But this is a mistake. The service was rendered and the order made in February, 1853. The revised statutes did not take effect till the *May* following.⁷ But the new constitution was in force and the R.S. 1843.

It will not be contended that the Court had the right to demand *Baird's* services as an attorney in defending *Wickens* as a pauper, without any reward. The 21st section, art. 1, of the constitution, provides, "that no man's particular services shall be demanded without just compensation." If sections 66, 67, 68, of chapter 40, R.S. 1843, authorizing the proper Court, in case of poor persons, to assign counsel who should defend without taking any fee or reward therefor, should be thought to conflict with this provision of the constitution, the inferior law must yield to the superior. But it is not necessary, in this part of the case, to notice such conflict, if any exists, beyond this guarded allusion. For article 3, chapter 40, *supra*, relates solely to civil suits. We are not aware of any such provision in the statutes of 1843, in relation to criminal cases. And as a statute re-

⁶ 6 Indiana 13 (1854).

⁷ The Revised Statutes (1852) took effect on the sixth day of May, 1853. *Jones v. Cavins*, 4 Ind. R. 305; *The State v. Keger*, *ibid.*, 621.

quiring the services of the citizen gratuitously, is against common right, Courts would feel called upon to give it a strict construction. Consequently, a statute requiring gratuitous services in civil cases, would not be extended to criminal cases. We would, on this ground, seem relieved from the pressure of the act authorizing poor persons to prosecute or defend *in forma pauperis*, without fees to the attorneys or costs to the officers of Court.

It is contended in argument that section 25, R.S. 1838, p. 435, was continued in force by section 14, and the fourth clause of section 16, R.S. 1843, chapter 59. But such construction is unwarranted. The 14th section continues in force all acts regulating the fees and salaries of officers. But when the legislature has taken away the fees and salaries of officers, there is nothing to be regulated, and this continuing clause can not apply. There is also an express independent provision on the same subject in the statute of 1843, and no words of continuance in relation to the provisions of the code of 1838. The latter enactment is, in its main features, wholly different from the former, and therefore repeals it.

The fourth clause of the 16th section continues all acts granting any rights to individuals, corporations, &c., meaning the individuals and corporations therein specially named. It has no reference to any abstract general law, or to persons or corporations generally.

It is not readily perceived why the argument drawn from such a source should have been pressed by the plaintiff in error.

The gratuitous defence of a pauper is placed upon two grounds, viz., as an honorary duty, even as far back as the civil law; and as a statutory requirement. Honorary duties are hardly susceptible of enforcement in a Court of law. Besides, in this state, the profession of the law was never much favored by special pecuniary emoluments, save, some years ago, in the case of docket-fees in certain contingencies. The reciprocal obligations of the profession of the body politic, are slender in proportion. Under our present constitution, it is reduced to where it always should have been, a common level with all other professions and pursuits. Its practitioners have no specific fees taxed by law—no special privileges or odious discriminations in their favor. Every voter who can find business, may practice on such terms as he contracts for. The practitioner, therefore, owes no honorary services to any other citizen, or to the public. The constitution and laws of the state go upon the just presumption that the public are discriminating enough in regard to qualifications. Every man having business in Court, is presumed to be as competent to select his legal adviser as he is to select his watchmaker or carpenter. The idea of one calling enjoying peculiar privileges, and therefore being more honorable than any other, is not congenial to our institutions. And that any class should be paid for their particular services in empty honors, is an obsolete idea, belonging to another age and to a state of society hostile to liberty and equal rights.

The legal profession having been thus properly stripped of all its odious distinctions and peculiar emoluments, the public can no longer justly demand of

that class of citizens any gratuitous services which would not be demandable of every other class. To the attorney, his profession is his means of livelihood. His legal knowledge is his capital stock. His professional services are no more at the mercy of the public, as to remuneration, than are the goods of the merchant, or the crops of the farmer, or the wares of the mechanic. The law which requires gratuitous services from a particular class, in effect imposes a tax to that extent upon such class— clearly in violation of the fundamental law, which provides for a uniform and equal rate of assessment and taxation upon all the citizens.

It must be matter of congratulation to the profession that they are thus relieved from the burden of gratuitous services and useless honors; and remitted to the more substantial rewards of other citizens.

In the present case, there is no controversy about the services having been rendered, or their value. The only question is, had the Circuit Court power to order them to be paid by the county of *Tippecanoe*?

The statutory provision relied upon to sustain the allowance, is, in substance, that the Court shall allow to the clerk for stationery, and to the sheriff and other persons reasonable sums for fuel and necessary articles furnished, and extra services performed, during the term of the Court.

The specific articles furnished, or services performed, for which such allowances are made, shall be entered in the book containing the proceedings of said Court. R.S. 1843, c. 38, ss. 61, 62.

These two sections confer upon the Court the discretionary power of deciding what articles and what services are necessary. They confer the further discretionary power of allowing to the persons who furnish the one, or render the other, such sums as may seem reasonable. And yet, taken in connection with the context, we should have great difficulty in saying that the terms of the act itself would include an allowance for the defence of prisoners, or that any such allowance was contemplated by the legislature as included.

But that the services rendered by *Baird* were necessary to be rendered by some attorney, will scarcely admit of argument. It is not to be thought of, in a civilized community, for a moment, that any citizen put in jeopardy of life or liberty, should be debarred of counsel because he was too poor to employ such aid. No Court could be respected, or respect itself, to sit and hear such a trial. The defence of the poor, in such cases, is a duty resting somewhere, which will be at once conceded as essential to the accused, to the Court, and to the public.

And the only question is, who shall pay?

It is urged that ordinarily some attorney will volunteer in such cases. As well might it be urged in excuse for the neglect of the public duty to provide for the poor, that some one will voluntarily feed and clothe them.

An attorney of the Court is under no obligation, honorary or otherwise, to volunteer his services. As a matter of private duty, it devolves as much on any other citizen of equal wealth to employ counsel in the defence, as on the attorney to render service gratuitously. Nor indeed is it the duty of any private citizen

to incur the expense. It is precisely like providing for the wants of the poor in other respects. The generous feelings which prompt acts of charity are admirable and ennobling to our nature. But even charity itself almost ceases to be a virtue, when they, whose duty it is to provide for the poor, make private charity a pretext for public neglect. If the state has not made provision for the defence of poor prisoners, it has presumed and trespassed unjustly upon the rights and generous feelings of the bar; levying upon that class a discriminating and unconstitutional tax. *Blythe v. The State*, 4 Ind. R. 525. It is therefore not their duty, and, under the circumstances, if no constitutional provision is made by law, no very great virtue, to encourage public neglect by gratuitous service.

Yet is the defence of the poor an imperative duty resting somewhere. We have seen it does not devolve upon the private citizen. It must, therefore, devolve upon the public or some portion of it. A moment's reflection would seem to fix that duty on that part of the body politic embraced in the county of *Tippecanoe*. The poor of that county are not left to the generous charity of individual citizens. They are provided for by law. A poor prisoner, as to his physical wants, falls within the reason of the law, and, to that extent, is clearly embraced in the law. If the prisoner was brought into Court not decently or comfortably clad, and was too poor to provide for himself, no one would doubt the power and duty of the Court, on general principles, without any statute or order to provide suitable clothes for him. It cannot be admitted for a moment that the law regards the physical wants of the citizen of more consequence than his life or his liberty. Whenever, therefore, the law makes provision for the one, at the public expense, the other, being within the reason of the law, is also embraced. It seems eminently proper and just, that the treasury of the county, which bears the expense of his support, imprisonment and trial, should also be chargeable with his defence.

But the manner in which the county treasurer is to be charged, is another consideration.

On this point the decision of the Court in *Gaston v. The Board of Commissioners of Marion County*, 3 Ind. R. 497, removes the difficulty. The facts were these. The coroner called a jury to examine into the cause of death, &c. He directed Dr. *Gaston*, who was then in the employ of the county, at a given salary, to attend upon all county paupers, to make a *post mortem* examination. For this service the doctor filed his claim with the board for 25 dollars, which they refused to allow. He then sued the county board. On the liability of the county, the Court say—"We have no doubt that in a case where a *post mortem* examination is really necessary, the coroner may, by his employment, bind the county to the payment for a sufficiency of professional skill to make the examination. To that extent, at least, he must be the agent of the county." *Alleghany County v. Watt*, 3 Penn. State R. 462. It is admitted that there is now no statutory authority for the judge to assign counsel. *Blythe v. The State*, *supra*. Nor is there any statutory authority for the coroner to employ a physician. R.S. 1843, c. 56. In

both cases it rests upon the necessity of such services to accomplish the ends of public justice. The judge who employs counsel, and the coroner who employs a physician, is, to that extent, the agent of the county.

But though, *ex necessitate*, the agents to employ, they are not the agents to fix the measure of compensation. That, like other cases of implied assumpsit, is to be determined by due course of law.

While the judge had the power to employ *Baird* at the expense of the county, he had not the power to settle the amount of compensation or make an allowance.

The judgment of the Common Pleas awarding a peremptory *mandamus* was, therefore, erroneous.

DAVIDSON, J., dissented.

Per Curiam.—The judgment is reversed with costs, Cause remanded, &c.

The Board of Commissioners of Knox County v. Jones⁸

When a poor person is an almshouse case, no outside person can collect for his support unless the poor person is properly transferred from the indoor to the outdoor relief list.

APPEAL from the *Knox* Court of Common Pleas.

PERKINS, J.: Suit by *Jones* against the board of commissioners of *Knox* county, to recover the sum of 16 dollars, alleged to be due for keeping one *O'Brien*, a pauper. On the trial of the cause upon appeal in the Court of Common Pleas, "it was proved," says the bill of exceptions, "that *O'Brien* was a pauper, who had been in the county poor-house of *Knox* county more than one year previous to the time of his death, and that he went, about the — day of *January*, from the said poor-house to the house of the plaintiff, *Jones*, in *Vincennes*; that a short time after, he was taken sick, while at the house of the plaintiff, and remained there, so being sick, about five days, when notice was given by plaintiff to the witness, *Dork*, who was keeper of the poor-house, of the sickness of *O'Brien*, &c.; that on the third day after, the said keeper took *O'Brien* from the house of plaintiff to the poor-house, where, soon after, he died. It was further proved that *H. Decker* was one of the township trustees of *Vincennes* township, and as such made and delivered to the plaintiff a certificate as follows:

"*Vincennes*, 10th day of *March*, 1854. I hereby certify that I authorized *E. M. Jones* to keep *Thomas O'Brien* during his last illness. *H. Decker*, T. V. T.

"It was further proved that plaintiff presented his account and claim for an allowance for keeping said *O'Brien*, being the same claim filed as the cause of action in this suit, to the defendants for allowance, and that defendants refused to make such allowance, and afterwards did allow to the said keeper of the poor-house his bill for the board of said pauper up to the time of his death, and including the time he was at the house of the plaintiff. It was proved that 2 dollars per

⁸ 7 Indiana 3 (1855).

day was a reasonable price for keeping said *O'Brien* at plaintiff's house, and there was evidence as follows: that at the time of the contest before the commissioners about the plaintiff's claim, it was said in the presence and hearing of plaintiff, that plaintiff had sent to the poor-house for *O'Brien* to come and help kill his hogs, to which he replied, and denied that he had sent for *O'Brien*, and said that he did not want him to help kill his hogs, but wanted him to cut up and salt his pork. There was evidence that plaintiff had been the keeper of the poor-house preceding the present keeper, *Dork*, and as such had had charge of the paupers; and there was some proof that a boy, a witness for defendants, went to the poor-house and told *O'Brien* that *Jones* was about to kill his hogs; that the next afternoon *O'Brien* went to *Jones's*; but there was no proof that plaintiff either authorized or knew of the message. It was proved that *O'Brien* told the boy to let him know when *Jones* would kill his hogs, and this was all the evidence."

The Court, upon the trial, charged the jury, "that if they were satisfied by the evidence that the plaintiff knew the pauper to be a county charge, and permitted him to remain about his house, he had no right to charge the county with any expense following therefrom, unless he was directed to do so by the proper authority, to-wit, the trustees of the township, or any of them;" to which the defendants excepted, &c.

Verdict and judgment for the plaintiff below.

We take it that no person can charge the county for the board of a poor person, whether known to be a pauper or not, unless such person is legally authorized to furnish the board at the county's expense.

The proper officers of the county are, by law, to determine who shall have relief as paupers, and how and by whom the relief shall be afforded, having regard to statutory requirements. The question, then, in this case, is, was the plaintiff below authorized to board *O'Brien* at the expense of the county?

A certificate from one of the three overseers of the poor of the township, to the effect that he had so authorized the plaintiff, seems to have been admitted in evidence without objection. But it is insisted here that one of the three overseers could not confer such authority; that it could only be conferred by a majority, at a meeting of all of the overseers, according to the doctrine of the case of *Hamilton v. The State*, 3 Ind. Rep. 452.

This objection would be well taken, did not the statute confer the power of acting upon a less number than the three overseers. We think it does. Sect. 2, p. 401, declares that every board of township trustees, "and the members thereof," shall be overseers of the poor. We think this section makes each member an overseer, with power to act.

But the action of the overseer must be authorized by the statute. In this case, we think it was not. *O'Brien* was not a pauper entitled to temporary relief. He was, and had been, for more than a year, on the list of paupers, and an inmate of the county poor-house. He was there provided for by law. The keeper of the

poor-house was bound to take care of and provide for him. No complaint was made that he did not in this case do, or stand ready to do, his duty. No emergency, as *Jones* well knew, was presented that authorized any person other than the keeper of the county poor-house to provide for *O'Brien* at the expense of the county. If *Jones* invited him away from the place provided for him, he should have returned him when he became weary of his company. If *O'Brien* voluntarily left the poor-house, and went unbidden to that of *Jones*, the latter should have refused to receive him, and the poor-house keeper should have immediately taken him back. Such was his duty, and doubtless he would have discharged it. See the provisions generally of the poor law above referred to.

Per Curiam.—The judgment is reversed with costs. Cause remanded, with instructions to the Court of Common Pleas to dismiss the suit.

**The Board of Commissioners of Fayette County v.
Chitwood and Another⁹**

Here the claim for reimbursement for medical services to a pauper was rejected because the services had not been authorized as required by the statute.

APPEAL from the Fayette Circuit Court.

GOOKINS, J.: *Chitwood* and *Porter* presented a claim to the board of commissioners of Fayette county for medical services rendered by them to a pauper. The board refused to allow the claim. From that decision, they appealed to the Circuit Court, where there was a trial by jury, verdict for the plaintiffs, new trial refused, and judgment. The record contains the evidence.

It is assigned for error that the cause was submitted to a jury, when it should have been tried by the Court. There was no error in this. Section 36, p. 230, 1 R.S. 1852, provides that an appeal from a decision of the board of commissioners shall be tried as an original cause; but it does not provide that it shall be tried in the same manner as by the commissioners. The board of commissioners, sitting as a Court, has no jury, and the allowance of claims by them is a special proceeding; but when a cause is pending in a court which has a jury, their opinion may be taken on any question of fact arising in the cause. *Lapreese v. Falls*, 7 Ind. R. 692; *Kemp v. Smith*, *ibid.* 471.

A certificate was admitted in evidence for the plaintiff's against the defendants' objection, as follows:

"State of Indiana, Fayette county. I, *Augustus H. Hotchkiss*, clerk of the board of trustees of *Connersville* township in said county, do hereby certify that the above account was duly presented to the board of trustees of said township, acting as overseers of the poor, and was by said board declared correct, and the same is recommended to be paid by the board of commissioners of said county. In testimony whereof witness the name of the president of said board, attested

⁹ 8 Indiana, 504 (1857).

by the clerk this 7th day of *June*, 1854. *G. Stradley*, Pres't. Attest: *A. H. Hotchkiss*, T'p. Clk."

This certificate does not purport to be a copy of any order of the board of trustees, taken from their records, but still, we think it was competent evidence for one purpose, at least. Each member of that board is, *ex officio*, an overseer of the poor. 1 R.S. p. 401, s. 2. *The Board of Commissioners, &c.*, v. *Jones*, 7 Ind. R. 3. The certificate tended to show that the services were rendered at the instance of at least one member of the board, and not voluntarily. Whether it was sufficient for that purpose we do not decide.

The defendants offered in evidence a record of their board, made at a special meeting held on the 31st. of *December*, 1853, which recited that they had assembled at the call of the auditor, for the purpose of contracting for the services of a physician for *Connersville* township, to give such attendance upon the paupers of said township as the overseers of the poor might deem necessary; and an order for the appointment of *Dr. S. Vance* for one year, if he would accept the appointment, for the sum of 100 dollars, and would agree to render such services as the paupers and the prisoners in jail might need; also the acceptance of *Dr. Vance* of their proposal.

The plaintiffs objected to this evidence on the ground that there was no legal authority for the board of commissioners to hold such special session, and that the order was, therefore, void; also, that they had no power to appoint a physician for one township of a county.

The board of commissioners is a court of special and limited jurisdiction. It holds four terms a year, on the first *Mondays* of *March*, *June*, *September*, and *December*. 1 R.S. p. 225, s. 6. It is required to keep a record of its proceedings. *Ibid.* ss. 7, 14. It is not authorized to meet at any other time, and can only transact business as a board when in session. *Archer v. The Board of Commissioners, &c.*, 3 Blackf. 501; *Campbell v. Brackenridge*, 8 *ibid.* 471. We are, therefore, of opinion that the order relied on, unsupported by any evidence that the contract had been confirmed by the board when legally in session, as by adopting it, or ordering payment upon it, was not valid, and was properly excluded.

The other objection to the contract, we think, is not well taken. The commissioners are required to contract with one or more skillful physicians to attend upon prisoners and paupers in the county asylum; and they may contract with physicians to attend upon the poor generally, in the county. 1 R.S. p. 101, s. 8. They are authorized to employ, not one physician, but physicians; and it would be unreasonable and inconvenient if they were not permitted to employ one for one part of the county, and another for another part.

The defendants offered to prove by *Piper* and *Hinkson*, two of the overseers of the poor, that the certificate given in evidence was obtained from the trustees by fraud. They stated that they had authorized their clerk to make the certificate, which was signed by their president and clerk. The alleged fraud consisted in their representation that they wished the certificate solely for the purpose of

getting their claim, before the board of commissioners. On the plaintiffs' objection this testimony was excluded. The testimony, if given, would have been no proof of fraud. There is no pretense that they were deceived as to the contents of the certificate. Its purport was open and apparent, and it does not seem to have been put to any fraudulent or illegal use.

It is assigned for error that the Circuit Court should have granted a new trial, because the proof was insufficient to sustain the verdict. This error we think well assigned. The certificate above recited seems to have been regarded as evidence of the correctness of the account, as no other proof was offered on that subject. We have shown that, as the act of one trustee, it was evidence for a different purpose. The civil township is a corporation, represented by a board of trustees, who are required to keep a true record of all their proceedings. 1 R.S. p. 495, s. 9. They, like the board of commissioners, can only speak by their record. The certificate given in evidence did not purport to be a transcript from that record. Whether, as a board, they have any power to pass upon claims, it is not necessary to decide. So far as appears, they have not attempted to do so. If they have any power to act upon claims, their action is evidently not conclusive. The commissioners are the guardians of the county treasury, and it is their duty to protect it. There was no proof whatever before the jury of the correctness of the plaintiffs' account. Consequently the verdict was wrong.

Per Curiam.—The judgment is reversed with costs. Cause remanded, &c.

The Board of Commissioners of Huntington County v. Boyle¹⁰

The overseers were empowered to employ medical services for the relief of temporary paupers at the expense of the county.

APPEAL from the *Huntington* Court of Common Pleas.

. . . . But it is further contended that the claim in this case must be considered as for services voluntarily rendered, because it is not shown that they were rendered pursuant to a contract with the board of commissioners. It is insisted that all services, except those rendered under such a contract, must be treated as voluntary, on the ground that no other authority has a right to call for services to be rendered at the county's expense. And it being established, as counsel think, that the claim is for voluntary services, they deny the jurisdiction of any Court over an appeal from the action of commissioners, as by section 9, p. 102, they assert that no appeal lies in such cases. *Nichols v. Howe*, 7 Ind. R. 506.

But we cannot assent to the premises assumed by counsel in this argument. Without attempting to define the exact extent of the power of overseers of the poor, touching this matter, we safely say that section 24, 1 R.S. p. 405, does empower them to employ medical and other necessary services, at the expense of the county, for the relief of temporary paupers.¹¹

Such being the case, we must presume in favor of the judgment below, the

¹⁰ 9 Ind. 296 (1857).

¹¹ *Board, etc. v. Chitwood*, 8 Indiana, 504 (1857).

record showing nothing to the contrary, that a case under that section was proved.

We certainly must presume that the services established to have been rendered were not voluntary; for a person cannot, as a general rule, render another liable to his suit by voluntarily thrusting his services upon him. For those thus rendered, the county would not be legally liable; nor, without statutory permission, could the commissioners of a county properly make an allowance for them, however meritorious and beneficial they might have been. By permission, the commissioners may, by way of gift, requite such services, and when they do, no appeal to a Court of law would avail, as no legal question would be presented, the allowance not being on the ground of legal obligation, but a mere matter of favor, or "natural equity."

Per Curiam.—The judgment is affirmed, with 10 per cent. damages and costs.

The Board of Commissioners of Decatur County v. Wheeldon¹²

This is a question of procedure connected with the provision of medical care for temporarily poor persons in a township in which a medical person other than the plaintiff had been provided by the authorities.

APPEAL from the Decatur Common Pleas.

HANNA, J.: *Wheeldon* sued for medical services, rendered to paupers between December 9, 1854 and March 15, 1855. The suit was commenced before a justice, where he had judgment. Trial, verdict, and judgment for plaintiff, in the Common Pleas.

The defendant, in the Common Pleas, moved to dismiss for want of a sufficient complaint, which was overruled. This presents the first point. The complaint shows, that the claim sued upon had been presented to the county board, where an allowance was refused. It does not show, that *Wheeldon* was employed, by the county authorities, to treat the poor; nor does it negative the appointment of any other, for that service. It is insisted that, for these reasons, it is insufficient to base an action upon.

In *Gaston v. The Board, &c.*, 3 Ind. 497, it was held that the refusal of the board to allow a claim similar to this was such action as could be appealed from, and was conclusive, against a distinct action, brought for the same cause, if not appealed from. But it is urged, that the rule of decision should be different, under 1 R.S. 1852, § 10, p. 102, which after specifying certain cases in which appeals lie, provides, that "If a claim be disallowed, in whole or in part, the claimant may appeal, or, at his option, bring an action against the county."

We are of opinion that, under this statute, the plaintiff had his election to appeal from the action of the board of commissioners or to bring suit.

As the complaint which was filed before the justice, avers that the plaintiff

¹² 15 Indiana 147 (1860).

was employed by the township authorities, having control of matters connected with the poor, we think it was sufficient, especially before a justice.

The evidence shows, that the plaintiff was employed by the township trustees, and his claim for service allowed by the township authorities; that the service was to persons, by such authorities, considered a temporary charge; that such persons could have been, but were not, removed to the county asylum; that they were inhabitants of, and the services were rendered in, *Washington* township, that by order of the county board, and under a contract with that body, *Edwin Swim* was employed as the physician to attend the inmates of the county asylum, those confined in jail, and the paupers of *Washington* township; that he could have attended those persons treated by the plaintiff, if he had been called upon so to do; that the township trustees, who employed the plaintiff, had no actual knowledge of the fact of such appointment, but were aware that *Swim* was attending the poor at the asylum. It further appears, that the order of the county board, appointing such physician, to serve as such from *June* 1853 to *June* 1854 was of record; that these services were rendered in *December* 1854, and *January* 1855; that the order made at the *June* term, 1854, appointing the physician to serve as such until *June*, 1855, was not spread of record, until after these services were rendered, when it was then entered, *nunc pro tunc*.

1 R.S. § 8, p. 101, makes it the special duty of the county board to "Contract with one or more skillful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum; and may also contract with physicians to attend upon the poor generally in the county; and no claim of a physician or surgeon, for such services, shall be allowed by such board, except in pursuance of the terms of such contract."

By 1 R.S., § 24, p. 405, it is made the duty of the overseers of the poor to grant such temporary relief, as the case may require, to those who may be sick or in distress, without friends or money, and who are not inhabitants of the township, &c. Upon this section, and § 4, p. 401 preceding it, the plaintiff appears to rely. The last-quoted section makes it the duty of the county to relieve and support all poor persons lawfully settled therein.

There are other sections, under which the county authorities are authorized to erect an asylum and cause paupers of a certain description to be removed thereto.

Conceding that it is the duty of the township authorities to see that relief is administered to those in temporary need, yet it does not follow that, therefore, they should be permitted to disregard the contract of the county board, with a physician, for the poor of the township, and be thereby authorized to procure the services of some other.

This being our opinion of the legal duty of the trustees, the question remaining to be settled, is one growing out of the peculiar facts of this case, namely: whether the plaintiff herein was to be regarded as having voluntarily rendered the services sued for; or, whether the employment was such as to authorize him to maintain the action.

The instruction given by the Court to the jury, was not in consonance with this opinion of the legal right of the trustees to employ medical aid, and may, therefore, have misled the jury in coming to a conclusion, upon the evidence before them, upon the proposition last above stated.

Per Curiam.—The judgment is reversed, with costs. Cause remanded, &c.

The Board of Commissioners of Jefferson County v. Rogers¹³

A person rendering medical care to a temporarily poor person ill of the smallpox at the request of an overseer recovers, although the county commissioners had made a contract with two other practitioners.

APPEAL from the *Jefferson* Common Pleas.

WORDEN, J.: *Rogers* laid a claim before the *Board of Commissioners* for medical services, which being disallowed by the board, he appealed to the Court of Common Pleas, where, upon trial by the Court, he recovered.

The board appealing here, the case is before us on the evidence.

It appears that a stranger, having no residence in *Jefferson* county, and without money, friends, or shelter, found himself in that county sick with the smallpox. In this condition he was taken by a citizen to *John E. Moore*, trustee and overseer of the poor for *Madison* township. *Moore* furnished him a shelter, and, as such overseer, employed the plaintiff as a physician to attend upon and administer to him. For the services thus rendered this suit is brought.

The ground of defense is, that at that time the *Board of Commissioners* had an existing contract with two other physicians to attend to all cases of sickness in the county jail and county poor house, requiring medical aid, and to attend to the sick poor persons of *Madison* township generally.

There can be no doubt that Sec. 24 of the act for the relief of the poor, (1 R.S. 405 [1852]) authorizes such relief to be granted, and renders the county liable therefor. *Board of Commissioners of Huntington County v. Boyle*, 9 Ind. 296. The question is, whether the overseer was obliged to apply to the physicians thus employed by the *Board of Commissioners*, or whether he might lawfully employ another.

This depends upon the construction that shall be given to Sec. 8 of an act to authorize and limit allowances, &c., (1 R.S. 101 [1852]) taken in connection with the poor law. That section makes it the duty of the board "to contract with one or more skillful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum"; and provides that they "may also contract with physicians to attend upon the poor generally in the county; and no claim of a physician or surgeon for *such* services shall be allowed by the board, except in pursuance of the terms of such contract."

The act for the relief of the poor does not contemplate, as a general proposition, that any county shall be bound to provide for any paupers except those

¹³ 17 Indiana 341 (1861).

settled therein. Thus, Sec. 5 provides how a settlement may be acquired. Section 10 provides for entering in the poor book of each township the names of all paupers therein. Section 14 provides for removing poor persons having no settlement "to the place where such persons belong." Section 11 provides that if the overseers are unable to ascertain the last place of legal settlement of a pauper, he shall be provided for in the county where he may be found. Section 35 authorizes the county boards to levy a tax for the support of the poor of their respective counties. Section 24, the one first above cited, provides that "it shall be the duty of the overseers of the poor, on complaint made to them that any person, not an inhabitant of their township, is lying sick therein, or in distress, without friends or money, so that he or she is likely to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the case may require." The section closes as follows: "And the board of county commissioners of the proper county, at any meeting of such board, shall examine all claims arising under the provisions of this section, and if found reasonable, shall direct the same to be audited and paid out of the county treasury."

Keeping in view the fact that each county provides for its own poor only, as a general proposition, and affords temporary relief to strangers, in the cases mentioned, as an exception, for which payment out of the county treasury is separately and specifically provided for, we have no doubt as to the construction which should be given to Sec. 8 of the act on the subject of allowances, *supra*. The language, "may also contract with physicians to attend upon *the poor generally in the county*," evidently has reference to such poor as are settled in the county, or are entitled to be therein provided for, in accordance with the general theory that the county provides only for its own poor. It does not include strangers entitled to temporary relief, under Sec. 24 of the poor act. This being the construction which we place upon the statutes, it follows that the physicians employed by the board were under no obligation to attend to this particular case of sickness, nor was the overseer under any obligation to call upon them, but might employ any other.

Per Curiam.—The judgment is affirmed, with costs.

Reiniche v. The Board of Commissioners of Allen Co.¹⁴

When the superintendent of an almshouse and the commissioners of a county agree upon a price for his services and undertake that only authorized poor persons will be sent the price covers the cost of all who are cared for during the period covered by the agreement.

APPEAL from the Allen Circuit Court.

PERKINS, J.: The appellant, on the 15th day of December, 1854, entered into an agreement as superintendent of the county asylum of Allen county, with the appellees, which agreement is in these words:

¹⁴ 20 Indiana 243 (1863).

"This agreement, made this 13th day of *December*, A.D. 1854, at the county of *Allen*, and State of *Indiana*, between *John B. Reiniche*, of said county, superintendent of the county asylum of said county of *Allen*, party of the first part, and the board of commissioners of the county of *Allen*, party of the second part. Witnesseth: that said party of the first part, hath agreed and doth hereby agree to and with said party of the second part, to receive, take charge of, and keep the paupers of said county of *Allen* for the term of three years, from the 1st day of *March* next, at the county asylum, or poor house, of said county, and to superintend said asylum and said paupers, and provide for their support, maintenance, employment and education, and discharge all other duties required by law, of him as such superintendent as aforesaid, for the term of time aforesaid, upon the conditions following, viz.:

"1st. No person is to be sent to said asylum, or there received as a pauper or otherwise, who has at the time any contagious disease.

2d. The paupers named as aforesaid, include only such persons as may by law be received and maintained in such asylum, and are only to be received by said party of the first part on the proper certificate of the proper overseer or overseers of the poor, that they are such, and on the production of the certificate of the physician of the county asylum that they are free from any contagious disease as above stipulated.

"3d. Said party of the first part is to provide and furnish everything necessary for the comfortable support of such paupers, including clothing, bedding and washing, at the said asylum as aforesaid for the term aforesaid, except medicine and medical attendance, without charge to said county or to said party of the second part, in any manner, or amount whatever, except as hereinafter stipulated.

"4th. Said party of the first part is to have possession of the poor house farm, on which such asylum is situate, and the use thereof for the term aforesaid, free of rent.

"5th. Said party of the first part is to have and receive for his services and expenditures, as aforesaid, in addition to the possession of said farm, as aforesaid, the sum of 2,547 dollars, and no more, which said sum shall be paid him in quarterly payments at the end of each quarter, in county orders.

"And said party of the second part, for and in consideration of the promises and undertakings of said party of the first part, as aforesaid, and of the full and faithful performance of said promises, and each of them, hereby agrees to and with said party of the first part, that he, the said party of the first part, shall have the use and occupancy of said poor house farm, to-wit: The farm purchased for a poor house from Messrs. *Sinclear* and *Fleming*.

"For and during the term aforesaid, free of rent, and that said party of the second part will also pay, or cause to be paid, to the said party of the first part, the said sum of 2,547 dollars, in the manner and at the time as above stipulated.

"In testimony whereof, the said party of the first part has hereunto set his hand and seal, and the said party of the second part, now sitting in its corporate

capacity, has hereunto subscribed its corporate name, and affixed its corporate seal, the day and year first above mentioned.

"J. B. REINICHE, (SEAL)

"WILLIAM ROBINSON, (SEAL)

"HENRY DICKINSON, (SEAL)

The Board of Co. Com. of *Allen Co.*"

Attest: *R. Starkweather*, County Auditor.

And afterwards, on the 16th day of *June*, 1858, the appellant filed in said Commissioner's Court, his claim for 1,334 dollars and 47 cents, with an exhibit of the names, ages and sexes of persons sent to said asylum by different overseers of the poor, which he claims were not entitled to be placed in said poor house, nor covered by his contract, and demanding said sum for keeping them.

In the complaint setting forth his claim, he says: "That he did not, in said contract, agree, for the consideration therein expressed to keep and support in said asylum, all those sick and indigent strangers, all those out of money and out of friends, and likely to suffer, and not inhabitants of the county, whose protection is provided for in the 24th section of the law, and to be attended to by the overseers."

He further says: "That the overseers of the poor, either in ignorance of the law, or to defraud him, did in all cases of complaints being made to them by strangers for relief under said section, issue their official mandate to him, to give the applicants admission to the asylum as paupers, and he always felt bound to receive them so sent, because he was in the first two years ignorant of the law, and after that he believed the county would remunerate him."

The section of the statute referred to (1 R.S. 405) reads thus:

"SEC. 24. It shall be the duty of the overseers of the poor, on complaint made to them that any person not an inhabitant of their township is lying sick therein, or in distress, without friends or money, so that he or she is likely to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the same may require; and if any person shall die within any township, who shall not leave money or other means necessary to defray his or her funeral expenses, it shall be the duty of the overseers of the poor of such township to employ some person to provide for and superintend the burial of such deceased person, and the necessary and reasonable expenses whereof shall be paid by and upon the order of such overseers; and the Board of County Commissioners of the proper county, at any meeting of such Board, shall examine all claims arising under the provisions of this section, and, if found reasonable, shall direct the same to be audited and paid out of the county treasury."

The Commissioners refused to allow the claim, and the plaintiff appealed to the Circuit Court, where the cause was submitted upon an agreed statement of facts, as follows:

"It is hereby agreed on the part of the plaintiff and the defendant to the above-entitled action, that a jury is waived, and the trial thereof is submitted to

the Court, upon the following agreed facts of the case; and that if the Court decides that the plaintiff should recover—that judgment be rendered against the defendant for—dollars; but should the court find from the said facts that the law is against the plaintiff, then the Court is to dismiss the action at the cost of the plaintiff.

"1st. Facts admitted.

"Plaintiff's contract as Superintendent, dated 30th day of *December*, 1854.

"4th. Superintendent's claim filed *June* 16th, 1858, marked 'D.'

"That the question at issue between the parties is purely a question of law, and arises under the act for the relief of the poor—Vol. I. of Revised Statutes, 401—and is this:

"Was the plaintiff, as such Superintendent, under his said contract bound to receive, keep and support that class of poor described and provided for in the 24th section of said act, without any further compensation than that named in the said contract?

"Are or are not the persons provided for in said section paupers of *Allen* county under said act?

"And would or would not the plaintiff be entitled to said reasonable compensation for the necessary expense thereby incurred, as would any other party to whom said overseers might be disposed under said section to commit said distressed person for relief?

"D. H. COLERICK, Att'y for Plaintiff.

"F. P. RANDALL, Att'y for Defendant."

Whereupon the Court found for the defendants, and entered up a judgment in these words:

"*John B. Reiniche*
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Board of Com. of Allen county. }

"Come the parties, and the case is submitted to the Court for trial, a jury being waived; and the Court, after hearing the proofs and allegations of parties, and being fully satisfied in the premises, does say and find for the defendants."

And afterwards, at the *November* term of said court, the plaintiff filed his bill of exceptions, which is in these words:

"STATE OF INDIANA, ALLEN COUNTY, }
Allen Circuit Court, *November* Term, 1861. }

"*John B. Reiniche*
v.
Board of Com. of Allen County. } Appeal from Board of Com.
of *Allen* county.

"Be it remembered, that at the *November* term of this court, 1860, the plaintiff and the defendant submitted this action to the decision of the Court upon their statement of facts made out and signed by the said parties; and at the

same time the plaintiff made his affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties; and afterwards, on the—judicial day of said term, the Court tried the said action, and found for the defendant, upon said agreed statement of facts; and then the plaintiff moved the Court for a new trial, because the finding was contrary to the evidence and the law; which motion the Court overruled, to which ruling the plaintiff then excepted; and then the plaintiff moved in arrest of judgment, which motion the Court overruled, and to said ruling the plaintiff then excepted; and judgment for costs was entered against the plaintiff, that at said *November* term, 1860, of said Court, said Court gave the said parties until the next ensuing term of said court to settle the plaintiff's bill of exceptions; that the next ensuing term of said Court was its *April* term, 1861, at which term Judge *Wilson* who tried said action did not preside, and the said bill of exceptions, by reason thereof, could not be settled at said term, and the case was continued to this present term of said Court to settle this said bill of exceptions, and the plaintiff prays the Court to sign this, his bill of exceptions, that the same may be made a part of the record as such; and the parties, by their agreement under the direction of the Court, direct the clerk, in making out the record in this action, to insert the contract between the plaintiff and the defendant for the care of the Poor-House farm, and the complaint of the plaintiff, filed before the Board of said Commissioners, and by it disallowed, and from which appeal was taken, and the facts agreed upon and signed by the parties, and the decision of the said Board of Commissioners in disallowing the demand, and the final judgment against the defendant by this Court on its said findings, which will contain a full presentment of all the proceedings for the opinion and decision of the Supreme Court in the premises.

"Witness my hand and seal, thisday of, it being the
juridical day of the *November* term, 1861, of said Court.

"E. R. WILSON, (SEAL.)"

The act for the relief of the poor seems to have reference to four classes of persons.

1. Section four provides that the county shall support all poor persons lawfully settled therein.
2. Section twelve provides for the support of poor whose place of settlement can not be determined.
3. Section twenty-four, above quoted, provides for the temporary relief of poor without regard to the question of residence.
4. Section eight, and an additional act of 1857, authorizes aid to certain poor at their homes.

Another section is as follows:

"SEC. 13. Whenever any person entitled to temporary relief as a pauper, shall be in any township in which he has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief by plac-

ing him or her temporarily in the poor-house of such county, if there be any to be employed therein so far as he or she is capable of any employment."

The simple question before this Court is, can persons, entitled to relief under section 24, properly be placed in the county asylum, under section 13, just quoted, for the reception of that relief? If so, we must presume the judgment below was right, as the Court heard evidence, it appears by the record, which was not in the agreed statement, and is not in the record, and, hence, not before us.

We think the persons referred to in section 24 might be placed in the asylum for relief, and, hence, included in the plaintiff's contract set forth in the commencement of this opinion.

Per Curiam.—The judgment below is affirmed, with costs.

The Board of Commissioners of Bartholomew County v. Wright¹⁵

In the case of a resident, stricken with smallpox and requiring only temporary relief, it was not necessary to take him to the almshouse even when there was one in the county and the county could be held for the cost of care rendered by a physician other than the one with whom the commissioners had contracted for those permanently under care.

HANNA, J.: *Wright* sued the appellants for medical services rendered to two persons "who were in, and *bona fide* residents of, *Columbus* township, in said county, and were a temporary charge as paupers on said county and township, and were not in the poor house or jail, nor was there any physician employed by the county whose business it was to attend upon them, and said services were rendered at the request and under the employment of the trustee of said township," &c.

There was a demurrer overruled to this complaint, and upon that ruling the first point is made.

It is not averred that there was a poor house, or asylum, in the county; if it appears at all from the complaint it is only inferentially.

It is not clear, therefore, that, upon the demurrer to the complaint, the question argued, and a decision of which is sought, is presented; but as the same question is raised by certain paragraphs of the answer, we will examine it. That question is, whether a resident of a township, who may become temporarily, as in this case by smallpox, a charge upon the public, must be taken to, and furnished with the needful help by those employed at the county asylum.

It has been decided, 20 Ind. 250, that persons not inhabitants, &c., who may become a temporary charge upon the public, are so far county paupers, as to be entitled to the benefits of the county asylum, and that the superintendent is bound to receive them as such, under section *thirteen*, which authorizes overseers of the poor to place temporary paupers, not residents of the township, in the asylum.

¹⁵ 22 Indiana 187 (1864); affirmed in *Kerlin v. Reynolds*, 142 Indiana 460 (1895).

It has also been held that an employment of a physician to attend upon the poor generally of the county, does not make it his duty to attend upon a non-inhabitant who may become a temporary charge, and not taken to the asylum. 17 Ind. 343. Still, neither of these cases decides whether a resident who may become a temporary charge, must be removed to the asylum, in instances when it can be done.

It is urged that this is the proper construction of the whole statutes upon the subject of the poor, especially in view of questions of economy.

It is well decided in the case cited from 17 Ind. that the general system provided for extending relief to the poor, in a county, has reference only to the poor, resident in such county; that any relief extended to transient persons is but exceptional to such general system. In view of this it would, therefore, be presumed that contracts would be made with reference to the persons who might legally be placed by the authorities in the asylum. The record would show who, and how many persons, were permanently on the books as paupers. As a general proposition it is provided that those who are permanent paupers shall be taken to the asylum when one is prepared. If temporary paupers must be placed in the asylum we do not well see upon what basis a bidder would make his calculations as to the amount for which he would be willing to keep the poor of the county, unless such bids should be for each person by the day or week, which, we believe, is not in accordance with the usual course pursued.

We are, upon the whole, inclined to the opinion that it was not the intention of the framers of these statutes that residents, requiring mere temporary relief, should necessarily be removed, before receiving the same, to the asylum. To this effect is the intimation in *The Board v. Wheeldon*, 15 Ind. 148, and *The Board v. Saunders*, 16 Ind. 405.

The question of whether it would be the duty of a physician, employed by the county to attend generally to the paupers thereof, or of a township, to render service to such persons as the overseer might deem to be temporarily entitled to aid, is not here involved, for it is not averred that a physician had been so employed.

Another question is argued as being raised by the demurrer, and that is, the right of the plaintiff to sue the defendants for the services, conceding the same to have been rendered under a proper employment by the township trustee. It is insisted that, as the employment was by the township trustee, and as the township is a corporation for which the trustee acts, he alone, in his official capacity, or the corporation, is responsible for the employment; that whatever may be said as to the ultimate responsibility of the county is with reference to such responsibility to the township, and not to the individual by the latter employed.

This proposition is based upon the first section of the act, 1 G. & H. 493, which makes trustees of townships overseers of the poor; the sixth section which gives said overseers the oversight of all poor persons in the township; the nineteenth section which makes it the duty of the overseers to make a return to the county auditor of the sums of money required for the poor of their respective

township, within fifteen days after every such contract herein provided for shall have been made; and the twenty-second and twenty-third sections, which provide for annual settlements of each trustee with the county commissioners.

The point is pressed upon the nineteenth section, in connection with the others, that, without doubt, the return therein named is in regard to contracts made by overseers for the year keeping of paupers where no asylum exists in a county. By section seven, it is made the duty of the overseers to give public notice, in such instances, and receive and act upon sealed proposals, to take care of paupers resident in each township.

But the whole tenor of the act shows that the system of relief is a county system, not that of townships. The township and township officers are made the subordinate mediums through which the county acts for the benefit of this unfortunate class of persons. By section four it is said: "Every county shall relieve and support all poor and indigent persons lawfully settled therein." By the sixth section, they are spoken of as a "county charge." By the thirty-fifth section the board of county commissioners is authorized to levy a tax for the support of the poor. If the township was liable to pay for the support of the poor therein, in the first instance, the authority should have been given to levy the tax for that purpose. The county tax would then be to reimburse to such townships the sums so advanced and not directly to support the poor.

The next point made is upon the sixth and seventh paragraphs of the answer, which set up that, at the *March* term of the Board of County Commissioners, said plaintiff filed his claim for these identical services, upon and for which an allowance was made by said Board to said plaintiff, payable out of the county treasury; that afterwards, at the *June* term in said year, the same claim for the same services was again filed before the said Board, and an allowance refused, because it had been passed upon as aforesaid at the preceding term; that plaintiff then instituted this suit thereon in the Circuit Court, said allowance still standing, &c.

These paragraphs show that the Board did not allow the full amount of the account or claim presented, which, we suppose, accounts for its subsequent presentation again. The answer is in substance a former recovery. Are the proceedings of a county board of such a character that they can, in this instance, be set up as a defence?

It had been repeatedly held by this Court that the board of county commissioners, under organizations similar to that which now exists, and with substantially the duties now devolved upon such tribunals, were and are inferior courts of record—judicial tribunals for certain purposes. The organization and duties are purely statutory. R. Stat. (1831), p. 131; R. Stat. (1838), p. 151; R. Stat. (1843), p. 183; 1 G. & H. 247; *The State v. Conner*, 5 Blkf. 326; *ibid.* 462; *Rhode v. Davis*, 2 Ind. 53; *The Board &c., v. Culler*, 7 *ibid.* 6; *Rosenthal v. The Madison, &c.*, 10 Ind. 361. From these adjudications, in reference to the acts of the Board under the statutes cited, and that of *Gaston v. The Board, &c.*, as to the conclusiveness of such acts, the argument is based that an allowance, or passing upon a

claim, can not, in subsequent proceedings, be thus ignored. Whatever force exists in the arguments, as applied to the acts of this tribunal, we need not determine, it appears to us, in view of section ten of an act to authorize and limit allowances by courts and boards, 1 G. & H. 64, which provides for appeals, &c., and: "If a claim be disallowed in whole or in part, the claimant may appeal; or, at his opinion, bring an action against the county."

Per Curiam.—The judgment is affirmed, with 3 per cent damages, and costs.

Hanna v. The Board of Commissioners of Putnam County¹⁶

The county commissioners, having exercised their power to buy land and establish a poor farm, having done this, have exhausted their power and cannot buy a second farm to establish a second poor farm. Such a proceeding can be only reviewed by the court.

RAY, J.: At a special session, the following order was made by the board of commissioners of Putnam County:

"Ordered, that William E. D. Barnett, William D. Smyth, and Henry W. Daniels be, and they are hereby, appointed a committee to purchase the *Exchange Bank* safe, provided that the same can be purchased at reasonable figures; and also land to an amount not exceeding two hundred and fifty acres, provided that the same can be purchased within three miles of the city of *Greencastle*, and provided, also, that the purchase money of said safe and land shall not exceed \$15,966.14. Said land to be used for a poor farm, and said safe to be for the use of the county treasurer, and make report in full on *Monday* next, at 11 A.M."

A motion was made by the appellant, a tax payer of said county, before said board, to have said order rescinded and set aside, on the ground that the order was made in view of the fact that the treasurer of the county had deposited the sum of \$15,966.14 of county funds in said *Exchange Bank*, and that said bank had failed, and that the sole purpose was to relieve said treasurer, who was one of the committee so appointed, from loss, by receiving from said bank, at an extravagant and unreasonable price, both the safe mentioned in said order and two hundred and fifty acres of land, owned by said bank, when said county already owned a poor farm, with proper buildings erected thereon, amply sufficient for all purposes; that one of the members of the board of commissioners was the father of said treasurer and a surety on his official bond, and that the order could not have been passed except upon his vote therefor.

The motion was overruled, and an appeal taken to the Court of Common Pleas of Putnam county, where, on motion, the appeal was dismissed for want of jurisdiction. It is provided by "an act for the relief of the poor," (1 G. & H., c. 25, p. 493,) that "it shall be lawful for the board of county commissioners, in the several counties of this State, whenever they may deem it advisable, to purchase a tract of land in the name of their respective counties, and thereon to build, establish and organize an asylum for the poor." This act was approved

¹⁶ 29 Indiana 170-174 (1867).

June 9, 1852. By section 31 of the "act providing for the organization of county boards, and prescribing some of their powers and duties," approved June 17, 1852, (1 G. & H. 247,) it is declared that "from all decisions of such commissioners there shall be allowed an appeal to the circuit or common pleas court by any person aggrieved."

It will be observed that while the act does not, in terms, purport to prescribe all the powers possessed by the board of county commissioners, it does, in express words authorize an appeal from all decisions they may make. The right of appeal is not limited to the decisions made by virtue of that act, but is expressly extended to all decisions; and when, therefore, jurisdiction already existed, or a new power was conferred by a subsequent statute, unless in the act granting the power an appeal is denied, the decision is subject to review in a higher court. It is true, that in *Allen v. Hostetter*, 16 Ind. 15, a different opinion was expressed, but that case was decided upon the authority of *French v. Lighty*, 9 Ind. 475. The latter case simply discussed the right of appeal from the circuit to this court in a special proceeding for the contest of an election, and the decision turned upon the language of the law authorizing appeals from the Common Pleas and Circuit Courts to the Supreme Court. The decision in *French v. Lighty* may have been very good law, but it furnished no support for the ruling in *Allen v. Hostetter*, and we do not agree in the result there reached. Because appeals are only authorized from the Circuit Court to the Supreme Court in civil and criminal cases, and as a contest of an election is neither a civil or criminal proceeding, and there is no appeal, according to the ruling in *French v. Lighty*, it does not follow, although it was so assumed in *Allen v. Hostetter*, that when a board of county commissioners decide an act of the legislature unconstitutional, no appeal can be taken to the Circuit Court, when such appeal is authorized from all decisions.

The boards of county commissioners are, for certain purposes, judicial tribunals. As such, they have been often recognized, both under the former constitution and the present one. *The State v. Conner*, 5 Blackf. 325; *ibid.* 462; *Rhode v. Davis*, 2 Ind. 53; *Board of Commissioners v. Wright*, 22 Ind. 187. But they are something more than a court. The law for their organization declares them to be a "body corporate and politic." Powers are conferred upon them, legislative in their nature, and the exercise of these powers involves a law making discretion. From the exercise of these powers no appeal would lie, for no court or jury is authorized to exercise legislative functions. The exercise of such powers is not included in the word "decisions." The language authorizing an appeal is comprehensive, and was undoubtedly intended to include all action of the commissioners not strictly within the limit of the local legislative power conferred by statute. For the purpose of authorizing an appeal, the word "decisions" will be applied to every ruling, final in its nature, upon any subject upon which the board of county commissioners are not authorized to take legislative action. Where they are thus authorized, an appeal will not lie.

We have recognized the right of appeal where the commissioners had author-

ized the issue of county bonds to pay bounties, but at the time such orders were passed the commissioners had no legislative power conferred by statute to act, and the question presented was as to the power of the legislature to confirm their action.

The question now presented is, whether the commissioners of *Pulnam* county had such legislative discretion as authorized them to order the purchase of a farm for the occupancy and benefit of the poor, when a location and building amply sufficient for all their wants was already owned by the county. The law provides for the purchase of a "tract of land" as an asylum for the poor. Does this authorize the purchase of two distinct tracts of land, miles apart, for this purpose? Are two distinct establishments to be put in operation in one county, for the accomplishment of one purpose? and if so, why not three, or, indeed, is there any limit to the exercise of the legislative discretion of the county commissioners? We must conclude that when the board have acted and provided a farm for the occupancy of the poor of the county, that their legislative power on that subject is exhausted. Their determination is no longer within the line of legislative discretion, but is subject to a review and reversal by the courts.

The Court of Common Pleas should have overruled the motion to dismiss the appeal, and should have determined whether the action of the county commissioners was within the authority confided to them by the statute.

The judgment is reversed, with costs, and the cause remanded for further proceedings.

The Board of Commissioners of Bartholomew County

v.

Boynton and Another¹⁷

In this county there was a poorhouse, and the commissioners had contracted with Dr. Groves to care for all persons in the jail or almshouse; and with Dr. Davis to care for those not in one or the other institution, but he had not been notified in this case. The claimant would have had to prove that no provision had been made. This he did not do. The decision of the lower court was reviewed.

RAY, C. J.: Action against the Board of Commissioners for services rendered to a pauper. The averments are as follows: "Alonzo G. Boynton and Dubois Hawley, partners as Boynton & Hawley, complain of the Board of Commissioners of Bartholomew county and say, the defendant is indebted to plaintiffs in the sum of thirty-eight dollars for medical services rendered to one Samuel P. Taggart, a pauper of Sand Creek township in said county, on the order of John Newson, Trustee of said township, a bill of particulars of which is filed herewith. Plaintiffs aver that during all the time of the rendition of said services said defendant had not contracted with physicians to attend upon the poor generally in

¹⁷ 30 Indiana 359-62 (1868).

said county, and had not contracted with a physician to attend upon the poor of said township. Plaintiffs demand payment for \$38.00."

The appellant filed a demurrer to the complaint for the reason it does not state facts sufficient to constitute a cause of action, which being submitted to the court was overruled, to which the appellant excepted at the time.

There is nothing in the demurrer. The trustee was authorized to contract, where no provision was made for the poor of his township. *Proviso* to sec. 8, p. 64, 1 G. & H. An answer was filed, as follows:

"The defendant for answer to the plaintiff's complaint says: that at the time of said pretended service to said Samuel P. Taggart, as set forth in said complaint, he was an inhabitant and resident of Sand Creek township in said county of Bartholomew; that at the time said medical service was rendered, and at the time of the plaintiff's employment therefore, there was a poor-house of said county, duly constructed and provided with a superintendent therefore employed by said county, for the reception and care of all the poor of said Bartholomew county, that at said time Doctor John B. Groves, who is a skillful physician, having a knowledge of surgery, was the physician of said poor-asylum, and of the Jail of said county, with whom the defendant, on the —day of March, 1867, had entered into a contract to attend upon and render all medical and surgical aid to all persons confined in the jail of said county and paupers in said county asylum, from said date, for the time of one year, for a consideration paid to him by defendant; that said Groves at said time of said pretended service rendered by plaintiffs, and of their said employment therefor by the said trustee, was at all times ready and willing to do and perform any and all duty within his said employment, of which plaintiffs and said trustee of Sand Creek township well knew; that at the time of the employment of plaintiffs by said trustee and the rendition of said medical services by them, Doctor Solomon Davis, who is a resident of Bartholomew county, and who is a competent and skillful physician, having a knowledge of surgery, was the physician of said county to attend upon and render all necessary medical and surgical aid to the poor generally therein outside of the poor-asylum and county jail; that on the —day of —, 1867, the defendant made and entered into a contract with said Davis wherein he agreed and was required by said contract for a consideration paid by defendant, to attend upon and to give and render all necessary medical and surgical aid and assistance to all the poor generally of Bartholomew, in each and every township of said county outside of the jail and asylum thereof, for the time of one year from said date, and gave bond to the defendant for the honest and faithful performance of his duties under said contract as aforesaid, with good and sufficient surety to the approval of defendant; that at the time of said pretended employment of plaintiffs by said trustee, and the rendition of said medical aid and service by them, said Doctor Davis was the physician of said county, as aforesaid, and was willing to attend upon and render and give all necessary medical and surgical aid and assistance to any and all the poor generally of said county in each and every township thereof; and especially was

he ready and willing and able to attend upon and give and render to said Samuel P. Taggart, the party on whom said plaintiffs attended, all necessary medical aid, as required by his said contract with defendants, if he had been notified that his services as physician as aforesaid were required; of all which plaintiffs and said trustee well knew; that in said case said Davis had no notice, and his services were at no time required; that Doctor Davis resides at Columbus, the county seat of said county, and easily accessible to any portion thereof; and one physician is able to attend upon all the poor of said county outside of the poor-house and county jail; and especially has said Davis at all times been ready and willing, able and sufficient for said purpose for which he was employed; and defendant demands judgment."

Appellees filed a demurrer to the answer for the cause that the same does not state facts sufficient to constitute a defense to the action, which being submitted to the court was sustained, to which appellant excepted at the time; and appellant abiding by the answer and refusing to answer further, judgment was entered against appellant for the amount of appellees' claim.

Section 8, 1 G. & H. 64, is as follows: "It is hereby specially made the duty of such board to contract with one or more skillful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum, and may also contract with physicians to attend upon the poor generally in the county, and no claim of a physician or surgeon for such services shall be allowed by such board, except in pursuance of the terms of such contract; provided that the foregoing section shall not be so construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require."

The authority to contract with physicians certainly includes the power to make the contract with one, if the board shall, in the exercise of a reasonable discretion, deem that contract sufficient. The answer avers that in this case it was ample; and as the trustee is only authorized to employ in the event the commissioners fail to do so, and such failure is here denied, the answer shows a want of power to make the employment. It is of course impossible for us to judge of the wants of the county in this matter, and as an issue was tendered, the proper place to try that issue as a matter of fact and not of law, was the court below. The demurrer should have been overruled.

The judgment is reversed, with costs.

The Commissioners of Morgan County v. Holman and Another¹⁸

The county commissioners must pay for medical care of poor persons. The fact that an appeal has been made to the commissioners and inadequately met by them does not preclude the party in interest from an appeal to the courts.

¹⁸ 34 Indiana Appellate 256 (1870).

APPEAL from the Morgan Common Pleas.

DOWNNEY, J.: It is alleged by the appellant that the common pleas erred in this case in the following respects: first, in sustaining demurrers to appellant's answer; second, in excluding from the jury evidence offered by the appellant; third, in its instructions to the jury to which appellant excepted; fourth, in refusing instructions asked by the appellant; and, fifth, in refusing to grant a new trial on his application.

The action was brought by the appellees against the appellants to recover for professional services, medical treatment, and medicines, for the poor of the county, alleged to have been rendered at the request and with the approval of the trustees and overseers of the poor in a certain township in the county. The complaint alleges that the claim had been presented to the board, and that they had refused to allow it. An account of the services, &c., rendered was filed with the complaint.

The defendant answered, first, a general denial; second, that the plaintiffs had filed their claim before the commissioners, and that the same remained pending, until at the term in December, 1868, when the board allowed them ninety dollars, as shown by a copy of the record filed with the answer; that they appealed to the circuit court and gave an appeal bond, which was approved by the auditor; wherefore they say the matter was still pending and undetermined in the circuit court; third, that the persons for whom the services were rendered were not, nor was any of them, entitled to relief under the poor laws, were duly settled in the township, were not without friends or money, of which the plaintiffs had notice; and that the defendant during all the time kept a poor asylum for the accommodation of all poor persons of the county of which the plaintiffs had notice; fourth, that as to the claim for services rendered and articles furnished for one of the persons named, the same was filed for allowance before the commissioners, and which, by continuance, was still pending before them and undecided. . . .

. . . . The instructions present the question whether the employment of the physicians to treat the persons mentioned, and to furnish them with medicines, by the proper township trustee, in the absence of fraud or collusion, is conclusive, in a proceeding to enforce the collection of the claim against the county. The common pleas so directed the jury, and we think the instruction was correct.

The court told the jury that the services, &c., must have been rendered in pursuance of an employment by the proper township trustee; and that if they should find that such services or medicines, or any part of them were performed or furnished without any prior contract on the part of the trustee, then there could be no recovery for such services. This proposition, coupled with another, was asked by the defendant, as a charge to the jury, and must be conceded to be correct.

The other proposition which was asked by the defendant, coupled with this, was, that it was necessary, in order to enable the plaintiffs to recover, that it should be shown by a preponderance of evidence that the persons, and each of

them, to whom they rendered services or furnished articles, were paupers, or persons who were at the time under the poor laws of the State entitled to temporary relief as poor persons, &c.

We think this branch of the instruction was correctly refused. The question as to the necessities of the persons relieved is a matter for the determination of the trustee, and we think if the people call competent and faithful persons to the discharge of the duties of this office, there will be little cause of complaint under this rule. Should there be connivance or fraud between the trustee and the claimant, this, of course, would present a different question.

The evidence which it is alleged was offered by the defendant and improperly excluded by the court, was the order of the board of commissioners allowing ninety dollars of the plaintiffs' claim. There was no error in excluding this. The plaintiffs were not bound by the action of the board in not allowing the full amount of their claim, or in allowing part of it. I G. & H. 65, sec. 10. And in addition to this, there was no answer in under which the evidence was admissible.

The new trial was properly refused. The case seems to have been quite well made out by the evidence.

Judgment affirmed, with five per cent, damages and costs.

The Board of Commissioners of Fountain County v. Wood¹⁹

The fact that county commissioners have employed an attorney to defend those on relief may not come to the judicial notice of the judge nor deprive him of the power to appoint an attorney to defend a poor person and to render the county liable for reasonable compensation.

DOWNEY, C.J.: The appellee is an attorney at law, and was appointed by an order of the circuit court of Fountain county, to assist in the defense of a person charged with the crime of murder. For this service he presented his claim to the board of commissioners in the sum of three hundred dollars; the board allowed one hundred and fifty dollars, and refused to allow any more. Wood appealed to the common pleas, where he amended his claim by increasing the amount to five hundred dollars. The commissioners demurred to the complaint, or claim, and their demurrer was overruled. They then filed a general denial, on which the case was tried by the court; finding for the plaintiff for five hundred dollars; motion for a new trial overruled; and judgment for the plaintiff.

Two errors are assigned; first, the overruling of the demurrer; and, second, the refusal to grant a new trial.

The claim, as it was when presented to the court on demurrer, was as follows:

"FOUNTAIN COUNTY

TO SAMUEL F. WOOD, DR.

To services as attorney, rendered by order and appointment of the circuit court of said county, at the August term, 1869, of said court, in the defense of the case of *The State of Indiana v. Frederick Remster*.—\$500.00
Sept. 7th, 1869."

¹⁹ 35 Indiana 70-73 (1871).

The objection to it, on demurrer, was that the court had no jurisdiction, and that the complaint did not state facts sufficient.

The first question is, had the common pleas jurisdiction? It is insisted that the appeal, in such a case, can only be taken to the circuit court, and not to the common pleas. This question has been decided both ways by this court, *The Board of Commissioners of Huntington County v. Boyle*, 9 Ind. 296, for; and *The Board of Commissioners of Wells County v. Weasner*, 10 Ind. 259, and *The Board of Commissioners of Huntington County v. Brown*, *ibid.* 545, against, the jurisdiction of the common pleas.

But in the last two cases the attention of the court seems not to have been called to section 31, p. 253, 1 G. & H. We think the language of that section sufficiently broad to embrace this case, and, as said in the case in 9 Ind. *supra*, "this, being the later provision, governs," and renders it proper to appeal either to the common pleas or circuit court. See, also, *Wright, Auditor of Marion County v. Harris*, 29 Ind. 438.

The facts stated in the claim, or account, are sufficient. No formal complaint in such a case is necessary. In presenting claims to the board of commissioners for allowance, it is sufficient to make out the account in the form used in this case, and the law does not contemplate the filing of a new complaint in the appellate court.

In arguing the question raised by the demurrer, the appellant's counsel insists that, as the county had already, by an order of the board of commissioners, retained an attorney to defend all poor persons prosecuted in the courts of the county, at a fixed compensation, the circuit court and the appellee were found to take notice of this fact, and that the circuit court could not appoint the appellee to assist in the defense of the case to which reference is made in this case. And it is insisted that the circuit court has no power in any case, to make an appointment which will be binding on the county, and render the county liable for the services.

This subject was considered by this court in *Webb v. Baird*, 6 Ind. 13, with reference to the Revised Statutes of 1843, and it was held that the county was liable, *ex necessitate*, for the value of the services of an attorney appointed by the circuit court to defend a poor person in a criminal action; but that the circuit court could not fix the measure of compensation. It was conceded in that case that there was then no statute expressly authorizing the court to appoint the attorney and render the county liable for his services.

Our present statute would seem not only to authorize the appointment, but also to confer authority to fix the amount of the compensation. It is provided, in the act to authorize and limit allowances by courts and boards, and drafts upon county treasurers, as follows:

"Sec. 2. The auditor may draw his warrant on the treasurer for a sum, the amount whereof, and the time when, and the person to whom, the same may be

due, are fixed by law, or ascertainable from a public record, with proof of personal identity.

"Sec. 3. He may also draw his warrant upon the treasurer for a sum allowed, or certified to be due by any court of record, authorized to use a seal, and having jurisdiction beyond that of justices of the peace; or by the board of county commissioners.

"Sec. 4. The said courts may allow sums to persons serving as assistants to the sheriff, in preparing the court house for the reception of such courts, and in preservation of order, and in attendance upon juries, and to persons performing *any services* under the order of such court. But the number of such assistants employed shall never exceed the actual necessity of the case." 1 G. & H. p. 64.

Conceding that the fact was judicially known to the judge of the circuit court that the county commissioners had retained an attorney by the year to defend poor persons charged with crime, which we do not concede, it does not follow that there may not have been circumstances in this case, such as the disproportion, in numbers or talents, between the counsel for the State and those of the defendant, or in the gravity of the charge made against the defendant, which would have justified the court in assigning additional counsel in behalf of the prisoner. But it is not made to appear that the person whom the commissioners had appointed was in attendance at the court, or that the appellee was not appointed on account of his absence. This point is not well presented by the demurrer. The court committed no error in overruling the demurrer.

The second allegation of error, which is, that the court incorrectly refused to grant a new trial, cannot be sustained. The evidence justified the finding.

The judgment is affirmed, with costs.

The Board of Commissioners of Noble County v. Schmoke²⁰

When the authorities undertake to care for a married woman, the husband is not liable for the cost.

From the Noble Circuit Court.

DOWNNEY, J.: This was an action by the appellant against the appellee. The complaint is in three paragraphs. The first alleges that the defendant is indebted to the plaintiff in the sum of three hundred and fifty dollars for the use of a room, board, lodging and care of the wife of said defendant, from the 1st day of January, 1872, to the 14th day of January, 1874, at his instance and request, a bill of particulars of which is filed, etc.

The second avers, that the defendant is indebted to the plaintiff in a like amount for use of room, board, lodging, care and attendance upon the wife of said defendant in the asylum for the poor of said county for the same period of time, at the like instance and request of the defendant, and has also a bill of particulars filed therewith.

²⁰ 51 Indiana 416 (1875).

The third charges, that, on the 1st day of January, 1872, the defendant's wife was insane; that she had been in the state hospital for the insane, and had been discharged therefrom as incurable; that the defendant had ample means to pay for the care of her, but had no place suitable for her keeping; that she was at times violent, and indulged in coarse, obscene and vulgar language, so that the defendant could get no proper person to take charge of and keep her; that the county had a large and commodious building constructed for a county poor-house, with rooms properly fitted for the keeping of insane persons, like the wife of the defendant, and had also a superintendent, with assistants, to take charge of and control the same; that the defendant, being desirous that his wife should be received into said building and kept therein, applied for her admission therein, and then and there promised and agreed with the plaintiff to pay what it should be reasonably worth to care for and attend upon his said wife while she should remain therein, and for the use of the room occupied by her.

It is further alleged, that the plaintiff, in consideration of the defendant's promise, received the wife of the defendant into said building, and kept and provided for her from January 1st, 1872, to January 14th, 1874, which, it is alleged, was reasonably worth three hundred and fifty dollars, which amount is due and remains unpaid, etc.

It is further stated, that, during all of said time, the room occupied by her was not needed for the use of the county poor who were in the building or had a right to be admitted therein, and that it required no additional attendants, nor were the county poor deprived of any advantages and privileges to which they were entitled during the time she was so kept therein, by reason of the fact that she was so kept. Wherefore, etc.

There was an attachment and process of garnishment sued out in connection with the action, but no question arises with reference thereto.

The defendant demurred to each paragraph of the complaint separately, and the demurrers were all sustained, and judgment was rendered for the defendant. This ruling is assigned for error.

If we are to adhere to, and be governed by, *The Board of Commissioners of Switzerland County v. Hildebrand*, 1 Ind. 555, there was no error in this ruling. It was held in that case, that if the wife was a pauper, the husband was not liable, because the provision made for her was a charity, and no person was liable to pay for the same. If she was not a pauper, then the commissioners had no authority to receive her into the asylum and provide for her, and no power or right to maintain an action for so doing.

There is no material difference between the first and second paragraphs of the complaint in this case and the counts in the declaration in the case of *The Board of Commissioners, etc., v. Hildebrand, supra*.

The third paragraph of the complaint in this case differs from any of the counts in the declaration in that case, in that it alleges a special agreement and promise to pay.

The case of *The Selectment of Bennington v. McGennes*, 1 D. Chip. 44, is referred to in a note to the *Hildebrand* case. In that case no special promise was alleged or made.

In *Howard v. Trustees of Whelstone Township*, 10 Ohio, 365, the opposite doctrine to that laid down in the case of *Hildebrand* is announced and sustained by very strong reasoning. This case was followed by the same court in *The Trustees of Springfield Township v. Demott*, 13 Ohio, 104.

In *The Inhabitants of Hanover v. Turner*, 14 Mass. 227, it was held that, according to the common law, the husband is liable, in the absence of a special contract, for such expenditures.

After a full consideration of the question, BIDDLE, C.J., and PETTIT and WORDEN, JJ., are of the opinion that the ruling of the circuit court was correct, and BUSKIRK and DOWNEY, JJ., are of the contrary opinion.

The result is that the judgment is affirmed, with costs.

Gordon v. The Board of Commissioners of Dearborn County²¹

The court is authorized to appoint legal counsel to defend a poor defendant and the county authorities are liable for reasonable compensation.

BIDDLE, J.: This case was brought before this court on appeal from the Dearborn Common Pleas, and the complaint held good. 44 Ind. 475.

Wherein the present complaint differs from the former one, if at all, we do not know; but the facts alleged in the complaint now before us, "as finally mended," may be stated as follows:

That, at the September term of the Dearborn Circuit Court, 1870, McDonald Cheek was indicted for the murder of Thomas Harrison; that, on application of Cheek, a change of venue was granted to the Franklin Circuit Court; that, on proper application, made to the Franklin Circuit Court by Cheek, the court appointed John Schwartz, a regular practising attorney, to assist Cheek in his defence; that afterwards, on the further application of Cheek, the said court also appointed the plaintiff to assist said Cheek in his defence, the said plaintiff also being a regular practising attorney therein; that the plaintiff, under said appointment, rendered eighteen days' services during the trial of said cause; that afterwards the Franklin Circuit Court ordered that the plaintiff be allowed the sum of two hundred dollars for said services so rendered on behalf of said Cheek, and that the auditor of Dearborn county should audit and allow the same, and draw his warrant therefor on the treasurer of said county, and that said treasurer should pay the same; that said services were reasonably worth said sum of two hundred dollars; that afterwards the plaintiff presented said order of appointment and allowance for said services, so made by the Franklin Circuit Court, to

²¹ 52 Indiana 322 (1876).

the board of commissioners of Dearborn County for allowance, and demanded payment thereof, which was refused; wherefore he demands judgment.

The several orders made by the court in the premises were filed as exhibits with the complaint.

A demurrer for the alleged want of sufficient facts was filed to this complaint, and, in obedience to the ruling of this court, heretofore made, was overruled. The appellee then answered in three paragraphs:

1. General denial.

2. "That at the time the plaintiff was appointed by the court to assist in the defence of said McDonald Cheek, as in his complaint stated, John Schwartz, an attorney of the Franklin Circuit Court, the counsel who had been previously first appointed by the court to defend the said Cheek, was present, ready to and did defend the said Cheek upon the charge in plaintiff's complaint mentioned, for which services they were ready to pay said Schwartz, and since have paid the said Schwartz, which payment was made before the bringing of this suit, all of which this plaintiff well knew."

A third paragraph of answer was filed, similar to the second, upon which issue of fact was taken by general denial, after a demurrer for want of sufficient facts had been overruled, and exception taken. A demurrer to the second paragraph of answer was overruled, and exception taken. The plaintiff, not wishing to reply, abided by the demurrer, and judgment was rendered against him, from which he appeals to this court.

The power of the court to appoint the appellant, on a second application, after it had appointed Schwartz on the first application, as stated in the answer, is denied by the appellee; and this raises the main question in the record.

Courts are established for the purpose of administering justice judicially, and their powers are coequal with their duties. The courts of England were originally created by the king's letters patent, but afterwards were established by act of parliament, with the king's assent. 3 Blackstone Com. 23-29. In this State, courts are created by the constitution and acts of the General Assembly (Const., art. 7, sec. 1), and, when once established and their jurisdiction defined, they have the inherent power to perform the duties, required of them, whether expressly granted or necessarily implied.

In *Webb v. Baird*, 6 Ind. 13, this court held, and we think correctly, that the circuit court had the power to appoint an attorney to defend a pauper, from the necessity of the case, without a statute authorizing the appointment. This case was approved in *The Board of Commissioners of Fountain County v. Wood*, 35 Ind. 70, where the question is fully discussed. See, also, *Kerr v. The State*, 35 Ind. 288.

But it is contended by the appellee, that section 15 of the practice act, 2 G. & H. 44, "only authorizes the court to appoint an attorney, and does not confer the power to appoint two or more attorneys to defend," etc.; and that, "by assigning Schwartz to conduct the defence, the authority of the court was ex-

hausted; and therefore the appointment of Gordon afterwards was without authority."

We do not think the power to make such an appointment rests solely on the section cited. We have seen by the authorities, *supra*, that the power is inherent in the court, to be exercised whenever the administration of justice judicially requires it to be done. Besides, section 4 of the act authorizing allowances enacts, that the courts "may allow sums . . . to persons performing any services under the order of such court. But the number of such assistants employed shall never exceed the actual necessity of the case."

Sections 2 and 3 of the same act authorize the auditor to draw his warrant upon the treasurer for the amount of such allowance. 1 G. & H. 64.

In the present case, there is nothing in the paragraphs of the answer which are demurred to, to show that the appointment of Gordon, after Schwartz had been appointed, exceeded "the actual necessity of the case"; and such an appointment, being regulated by the judicial discretion of the court below, in full view of all the facts and circumstances, which cannot be so clearly shown here, would not be revised by this court, unless the power was plainly abused.

We may add, though it scarcely appears necessary, as the point is not contested, that the Franklin Circuit Court had complete jurisdiction of the case (2 G. & H. 407, sec. 79), and that the order of appointment and the allowance made had the same binding force upon the board of commissioners of Dearborn county as if the case had been tried in the Dearborn Circuit Court, and the order of appointment and the allowance made therein.

The judgment is reversed; cause remanded, with instructions to sustain the demurrers to the second and third paragraphs of answer, and for further proceedings.

Conner v. The Board of Comm'rs of Franklin County²²

The county commissioners can be held for the costs of medical care rendered at the request of township authorities to persons receiving temporary relief from the township, when there was no physician designated to care for poor outside the almshouse.

Howe, J.: Appellant, as plaintiff, sued the appellee, as defendant, in the court below.

Appellant's complaint was in two paragraphs, to each of which paragraphs the appellee demurred, upon the ground that the facts stated therein were not sufficient to constitute a cause of action. These demurrers were sustained by the court below, and to these decisions the appellant excepted, and judgment was rendered on the demurrers, for the appellee.

The appellant has assigned in this court, as alleged errors, the decisions of the court below, in sustaining appellee's demurrers to each paragraph of his com-

²² 57 Indiana 15 (1877).

plaint. As these alleged errors call in question the sufficiency of the complaint, we will summarize, as briefly as we can, the facts stated in each paragraph.

In the first paragraph of his complaint, the appellant alleged, in substance, that he was, and had been for the last twenty years, a practising physician of Franklin county, Indiana; that the appellee was indebted to him in the sum of fifty-three dollars and fifty cents, for medicines furnished, and medical attention and services rendered, to certain persons named, at the instance and request, and under the direction and employment of the trustee of Metamora township, in said county; that, at and during the time of furnishing said medicines and rendering said services, and at the date of the employment of the appellant by said trustee, the said persons named were paupers and a temporary charge upon said county, and *bona fide* residents and inhabitants of and in said Metamora township; that during all of said time there was no physician in said county whose duty it was to attend on, and afford relief to, the paupers of said township, outside of the poor-house and jail of said county, and none of the paupers named was in the poor-house or jail of said county, during the time of appellant's attendance on them; a bill of particulars of said indebtedness was filed with and made part of the complaint; that said bill was duly presented to appellee, at its September term, 1875, for allowance and payment, but that appellee refused to allow and pay the same; and that said bill was then due and unpaid; wherefore, etc.

The second paragraph of the appellant's complaint contained all the allegations of the first paragraph, except the allegation that the bill had been presented to the appellee for payment, with the following additional averments: "That the physician, who had been employed by said board to attend on the paupers of said township, during said time, had left said county and abandoned his contract with said board to care and attend on the paupers of said township, and refused to perform said duty; and that there was no other physician or person whose duty it was to attend on and afford relief to the paupers of said township, who were not inmates of the poor-house or jail of said county."

A single question is presented for our consideration by the record of this cause, which question may be thus stated: Under the facts stated in either paragraph of appellant's complaint, was the trustee of Metamora township authorized by law to employ the appellant to attend as a physician on the paupers of said township, so as to render the appellee liable to the appellant for the payment of his services under such employment? We think this question must be answered in the affirmative, upon the facts stated in each paragraph of the complaint. The township trustee is by law the overseer of the poor of his township. 1 R.S. 1876, p. 676, sec. 1. He is required to see that all poor persons in his township "are properly relieved and taken care of in the manner required by law." 1 R.S. 1876, p. 677, sec. 6. If the board of commissioners of his county fails to contract with a physician to attend upon the poor of his township, as is alleged in the first paragraph of appellant's complaint, the law contemplates

that the township trustee, as the overseer of the poor of his township, shall employ such medical or surgical services as the paupers within his township may require. 1 R.S. 1876, p. 63, sec. 8. The spirit and intention of the legislation of this State, on this subject, seem to require that the paupers of each county shall, in any event, receive necessary medical or surgical attention, at the expense of the county. The county board may "contract with physicians to attend upon the poor generally in the country," and, in case of such contract, the law provides, that "no claim of a physician or surgeon for such services shall be allowed by such board except in pursuance of the terms of such contract." Sec. 8, *supra*. But it is expressly provided, in the same section, that it "shall not be so construed as to prevent the overseers of the poor or any one of them in townships not otherwise provided for, from employing such medical or surgical services as paupers within his, or their jurisdiction, may require." We think that the case made in the 2d paragraph of appellant's complaint comes fairly within the foregoing proviso; for, if the contracting physician, whose duty it was to attend upon the poor of Metamora township, had abandoned his contract and moved away from the county, as alleged, then the township was "not otherwise provided for," and the trustee had the right to employ such medical or surgical services as the paupers of his township might require. The expense of all such services, under such employment, is a proper charge against the county. In the case of *The Commissioners of Morgan County v. Holman*, 34 Ind. 256, it was held by this court, that where medical services are rendered by a physician, under the employment of a township trustee, to paupers of his township, such employment, in the absence of fraud or collusion, is conclusive in a suit to enforce the collection of the claim against the county for such services. See also the case of *The Board of Commissioners of Bartholomew County v. Ford*, 27 Ind. 17.

In our opinion, each of the paragraphs of appellant's complaint, in this case, stated facts sufficient to constitute a cause of action against the appellee; and, therefore, we hold that the court below erred, in sustaining the appellee's demurrers to each of said paragraphs.

The judgment of the court below is reversed, at the appellee's costs, and the cause is remanded, with instructions to the court to overrule the appellee's demurrers to appellant's complaint, and for further proceedings.

The State v. Neff²³

The defendant, superintendent of the almshouse, when charged with assault upon one of the poor persons cared for in the institution, pled that he had administered simply moderate discipline in the maintenance of order in the institution, and it was held that he was authorized to administer that kind of correction to the persons in his charge.

²³ 58 Indiana 516 (1877).

NIBLACK, J.: This was an indictment for an assault and battery.

The substantial part of the indictment says:

"The grand jurors for Boone county, in the State of Indiana, . . . present, that John Neff, on the 1st day of January, A.D. 1877, at the county and State aforesaid, did then and there, in a rude, insolent and angry manner, unlawfully touch, strike, beat, bruise and wound one Elizabeth Wyatt."

The defendant pleaded specially to the indictment, as follows:

"Comes now the defendant, and for special plea herein says *actio non*, because, he says, that, at the time and place of the alleged assault and battery mentioned in the indictment, he was the legally appointed custodian and superintendent of the county asylum for the indigent and poor of said county of Boone, and that the said Elizabeth Wyatt, the person upon whom said pretended assault and battery is charged to have been perpetrated, was, at the time and place mentioned, a pauper and an inmate of the aforesaid county asylum, duly and legally admitted therein, and under the care and custody of the defendant, as such custodian and superintendent of said county asylum; that the said Elizabeth Wyatt, at the time of the alleged perpetration of the assault and battery charged in the indictment, was cross, stubborn, ill, disobedient and ungovernable, and was fighting and scolding other paupers and inmates of said asylum; and that the beating and striking alleged in the complaint was simply moderate and gentle coercion, administered to and upon her by the defendant, as the custodian and superintendent of the county asylum aforesaid, without anger, insolence or rudeness upon the part of the defendant, but for the purpose of preserving quiet and subordination among the inmates of said asylum, as he lawfully had the right to do, and no more."

The prosecuting attorney demurred to this plea for want of sufficient facts to constitute a defence. The court overruled the demurrer, and rendered judgment discharging the defendant.

The State brings the cause into this court by appeal on the question of law involved in the overruling of the demurrer to the plea.

Bicknell, in his *Criminal Practice*, page 296, in summing up well-established defences to charges of assault and battery, says:

"It is a good defence that the battery was merely the chastisement of a child by its parents; the correcting of an apprentice or scholar by the master; or the punishment of a criminal by the proper officer; provided the chastisement be moderate in the manner, the instrument, and the quantity of it, or that the criminal be punished in the manner appointed by law. Buller's N.P. 12." See, also, *Pomeroy's Notes to 1 Archbold Criminal Law*, 8th ed., p. 923, *Wharton Criminal Law*, sec. 1259.

The same rule applies, substantially, to keepers of almshouses and asylums for the poor, so far as necessary to preserve order and to enforce proper discipline in their establishments. *State v. Hull*, 34 Conn. 132; *Forde v. Skinner*, 4 Car & P. 404; *Regina v. Mercer*, 6 Jurist, 243.

The facts set up in the plea, we think, were sufficient as a defence to the indictment. The prosecuting attorney, by demurring to the plea instead of taking issue upon it, admitted the truth of the facts thus set up. We see no error in the ruling of the court on the demurrer.

The judgment is affirmed.

Cooper v. The Board of Commissioners of Howard County²⁴

A physician having undertaken to care for all the sick poor for a specified price cannot increase his charge because he is asked to care for some non-resident as well as the resident poor.

PERKINS, J.: Dr. William B. Cooper sued the Commissioners of Howard county, Indiana, upon a bill of particulars, for medicines and visits, as a physician, to certain named persons, amounting to \$196. He averred in his complaint, that said persons were paupers in said county, without stating in what township, but were non-residents of the county.

The Commissioners answered:

1. The general denial;
2. Setting up the following contract, claiming that the services sued for were embraced by it:

"Know all men by these presents, that we, the undersigned, are held and firmly bound to the county of Howard, in the State of Indiana, in the penal sum of one thousand dollars, for the payment of which we bind ourselves jointly and severally. Witness," etc.

"This obligation to be void upon the following condition, to wit: Whereas William B. Cooper has agreed with the Board of Commissioners of said county, that he will, for the term of two years from the date hereof, do all the pauper practice in Centre township in said county, including the county asylum and jail, and furnish all necessary and proper medicines and surgical aid for disease and injuries of every kind, and also midwifery included. And said William B. Cooper further agrees to present no claims to demands for any extra charges. And the said William B. Cooper further agrees to render the service above indicated promptly upon the reasonable request of the proper authorities, for which the county of Howard agrees to pay, in quarterly installments, the sum of five hundred and fifty-nine dollars, for said term of two years; and it is further agreed, if the said William B. Cooper shall fail or refuse to render, at any time, the services above required of him by the terms of the contract, upon reasonable and proper request, the said county shall be at liberty to employ any other physician and surgeon for the given case, and the cost and expense thereof to be deducted from the amount agreed to be paid to the said William B. Cooper."

The agreement was duly executed.

Reply, in general denial of the second paragraph of answer.

²⁴ 64 Indiana 520 (1878).

Trial by jury, to whom, before their retirement, the court gave the following instruction, viz.:

"Under the contract made by the plaintiff, with the board of commissioners, to do the pauper practice of Centre township, including the jail and county asylum, furnish medicine, perform surgery and midwifery, he was bound to treat non-inhabitants of the county of Howard, as well as inhabitants; the transient poor and destitute, as well as those having a settlement within the county; and, if the medical services claimed for in this action were rendered in Centre township, of Howard county, within the period of time covered by the contract, the plaintiff is not entitled to recover therefor in this action.

C. N. POLLARD, Judge."

"Given by the court, and excepted to by the plaintiff at the time.

Blacklidge and Blacklidge,

"Attorneys for Plaintiff."

Thereupon the jury retired to consult of their verdict.

The jury found for the defendant, and answered interrogatories propounded by the plaintiff, as follows:

1. "Were the persons, to whom plaintiff rendered medical services, (if such services were rendered), residents of the county of Howard, at the time such services were rendered?"

Ans. "W. W. Ryan was not a resident."

2. "Were such services rendered (if they were rendered) upon the order of the acting trustee of Centre township, and superintendent of the county asylum of Howard county?"

Ans. "They were."

The plaintiff filed a motion for a new trial, stating the following reasons therefor:

1. Verdict contrary to law;
2. Verdict contrary to evidence; and,
3. Error of the court in giving its instruction to the jury.

The motion was overruled, and judgment rendered on the verdict, to which the plaintiff entered an exception.

It is assigned for error, that the court erred in overruling the motion for a new trial.

There is no bill of exceptions in the record. But the motion for a new trial is a part of the record without a bill of exceptions. *Kirby v. Cannon*, 9 Ind. 371. And the instruction was properly made a part of the record in one of the statutory modes. Sec. 325, 2 R.S. 1876, p. 168. We can not say, from what appears in the record, that the first and second causes or reasons for a new trial existed.

The third reason, viz., the giving by the court to the jury, of the single instruction above copied, depends upon the construction to be given to the contract set forth in the answer.

Section 8, p. 63, 1 R.S. 1876, is as follows:

"It is hereby specially made the duty of such board to contract with one or

more skilful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum, and may also contract with physicians to attend upon the poor generally in the county, and no claim of a physician or surgeon for such services shall be allowed by such board except in pursuance of the terms of such contract, provided that the foregoing section shall not be so construed as to prevent the overseers of the poor or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his, or their jurisdiction, may require."

In the act for the relief of the poor, it is made the duty of the overseers of the poor to provide for such as are transient. Sections 12 and 13 of said act are as follows, 1 R.S. 1876, p. 679:

"SEC. 12. If any one within the description of poor persons specified in this act, shall be found in any county or township and the overseers of the poor of such township shall be unable to ascertain and establish the last place of legal settlement of such person, they shall proceed to provide for such poor person in the same manner as other persons are hereby directed to be provided for.

"SEC. 13. Whenever any person entitled to temporary relief as a pauper, shall be in any township in which he has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief by placing him or her temporarily in the poor-house of such county, if there be any, to be employed therein so far as he or she is capable of any employment."

It is clearly shown that the medical services were rendered to paupers, at the time in Centre township. This being so, the services were embraced by the contract set up in the answer. *Reiniche v. The Board of Commissioners, etc.*, 20 Ind. 243, we think in point.

The contract in *The Board of Commissioners, etc. v. Rogers*, 17 Ind. 341, does not appear to have been as comprehensive as that in the present case. See *The Board of Commissioners, etc., v. Boynton*, 30 Ind. 359; *Conner v. The Board of Commissioners, etc.*, 57 Ind. 15.

The court did not err in its instructions, nor in overruling the motion for a new trial. The contract in question embraced the transient as well as the resident paupers; all, in short, that the county were bound to provide for, in said Centre township.

Judgment affirmed, with costs.

Hood, by His Next Friend, Hood v. Pearson²⁵

When those responsible for the care of an infant will not provide the cost necessary to secure justice, he may sue as a poor person.

BIDDLE, J. Robert M. Hood, by James W. Hood, his next friend, brought this action against Mahlon H. Pearson, to recover the possession of a horse and wagon.

²⁵ 67 Indiana 368 (1879).

Pearson answered the complaint by a general denial. Before trial, the court, on motion, ordered "that James W. Hood be removed as next friend," and also ordered "the plaintiff to substitute a competent and responsible person as next friend, within thirty days," and continued the cause.

The plaintiff failed to substitute a competent and responsible person as next friend, under the order, but, at the next term of the court, moved, upon a proper showing, to be allowed to prosecute the case as a poor person. On failure to comply with the order of the court to substitute another person as next friend, the court overruled the motion to allow the appellant to prosecute the case as a poor person, and thereupon dismissed the suit; to all of which the appellant reserved his exceptions. Upon the dismissal of the suit, the court rendered judgment against the appellant, for the return of the property to the appellee, and, in default thereof, for one hundred and fifty dollars and costs of suit. On appeal, and assignments of error in this court, the following questions are discussed:

1. The appellant insists that the record should show, affirmatively, the grounds upon which the court removed the next friend of the infant.

We think not. Section 11 of the code of practice gives the court the power, in express terms, to remove a next friend. We must presume the ruling to be right. If the ruling was wrong, it was for the appellant to make the error appear of record. Not having done so he can not question the decision.

2. Has an infant, on a proper case made, the right to prosecute a suit as a poor person, without suing by a next friend?

The sections of the statute bearing upon this question are as follows:

"Sec. 10. When an infant shall have a right of action, such infant shall be entitled to maintain suit thereon, and the same shall not be delayed or deferred on account of such infant not being of full age.

"Sec. 11. Before any process shall be issued in the name of an infant, who is a sole plaintiff, a competent and responsible person shall consent in writing to appear, as the next friend of such infant, and such next friend shall be responsible for the costs of such action, and thereupon process shall issue as in other cases; but where it shall appear to the court that such next friend is incompetent, or irresponsible, the court may remove him, and permit some suitable person to be substituted, without prejudice to the progress of the action.

"Sec. 15. Any poor person, not having sufficient means to prosecute or defend an action, may apply to the court in which the action is intended to be brought, or is pending, for leave to prosecute or defend, as a poor person. The court, if satisfied that such person has not sufficient means to prosecute or defend the action, shall admit the applicant to prosecute or defend as a poor person, and shall assign him an attorney to defend or prosecute the cause, and all other officers requisite for the prosecution or defence, who shall do their duty therein without taking any fee or reward therefor from such poor person,"

2 R.S. 1876, pp. 37, 38.

It is insisted by the appellee, that an infant must sue by a next friend, according to section 11, *supra*, and can not sue as a poor person, under section 15, *supra*.

Such a construction would exclude an infant from suing as a poor person, unless he secured the costs by a next friend, while it would admit an adult to sue as a poor person, without giving security for costs; indeed, it would allow an adult to sue at the public expense, and deny same right to an infant. We can not suppose that the Legislature meant any such result. One of the main reasons why an infant must sue by a next friend is, that the infant is not liable for costs; but, when no costs are to be paid by the infant, this reason entirely ceases. Of course, the next friend must see as to the propriety of bringing the suit, and, if brought, see that it is conducted with prudence and circumspection; but, when an attorney has been assigned by the court to prosecute the case for the infant, these reasons also cease, for it must be supposed that an attorney is as competent to advise as to the propriety of bringing a suit, and also as to its manner of prosecution, as a next friend. And we can see no necessity for a next friend, when the statute provides the infant with an attorney. In this view we do no violence to a fair construction of section 11. The two sections must be construed together. The construction insisted upon by the appellee would entirely overrule section 15, as to infants, while the view we take does not infringe upon section 11. The two sections must be construed together. The construction insisted upon by the appellee would entirely over rule Section 15, as to infants, while the view we take does not infringe upon Section 11, but upholds both sections. Taken together, they plainly mean that, where an infant has means to prosecute his suit, he must sue by a next friend; and that when he has no such means he may sue as a poor person, and have an attorney assigned to prosecute the case for him. The poverty of the infant might be the cause why he could not procure a next friend to stand for his costs. In such case, if he was denied the right to sue as a poor person, he could not sue at all—a consequence contrary to justice, against the letter of section 10, *supra*, and inimical to the spirit of our institutions; one certainly to be avoided if possible.

If we are right in this view, the court erred in denying the right of the appellant to sue as a poor person, and in dismissing his case.

The judgment is reversed, at the costs of the appellee, and the cause is remanded for further proceedings according to this opinion.

ON PETITION FOR A REHEARING

BIDDLE, J.: The appellee asks a rehearing, upon the ground that the showing made by the affidavit of the minor to sue as a poor person does not state that it contains all the evidence upon the question.

The point was not mentioned in the appellee's original brief. His arguments were all upon the questions of law arising in the case, all of which were carefully decided, and of which he does not complain. Nowhere in the record, nor in the

appellee's brief, is the sufficiency of the showing that the minor was a poor person, "not having sufficient means to prosecute or defend an action," questioned because the affidavit did not contain all the evidence. The point must therefore be held as waived. For this reason, if for no other, the appellee would not be entitled to a rehearing, even though the new question he presents had merit. But we prefer to decide the question, as it is one generally affecting the practice.

The objection to the showing by the affidavit of the minor is, that it does not state that this was all the evidence given to the court touching the question. This is not necessary in an *ex parte* affidavit. It is taken as *prima facie* true, not as so much evidence of its truth; and, when it is not controverted, it is held sufficient. No objection is made to the sufficiency of the facts stated in the affidavit to constitute a proper showing; but it is insisted that "This court can not tell whether the court below was justified in its action or not, unless they have the evidence before it." This court has the evidence before it in the uncontroverted affidavit, properly presented by a bill of exceptions. In all this class of affidavits, when the affidavit is not controverted, it is never necessary to show that it contains all the evidence given upon the question. In such cases, it is always taken as *prima facie* true. This is an old common-law rule which we never before heard questioned. In an affidavit for continuance, for a change of venue, to found a rule upon, in attachment, for contempt, in matters of surprise, on a motion for a new trial, to obtain a writ, to verify a plea or the service of a summons, or for an injunction, and in innumerable instances when they are necessary in the course of a judicial proceeding, it is never necessary to show that it contains *all* the evidence upon the subject. Blackstone expresses the true use of an *ex parte* affidavit, for the purpose of founding a motion, in the following words:

"This may be done upon what is called a *motion*; which is an occasional application to the court by the parties or their counsel, in order to obtain some rule or order of court, which becomes necessary in the progress of a cause; and it is usually grounded upon an affidavit (the perfect tense of the verb *affido*), being a voluntary oath before some judge or officer of the court, to evince the truth of certain facts, upon which the motion is grounded." 3 Bl. Com. 304.

It will be observed that the affidavit is an "application to the court," not addressed to the issues of the cause; it is to obtain some rule or order from the court, not to prove a fact in issue on the trial; it is to "evince the truth of certain facts," not as controverted evidence tending to prove certain facts.

A suit in attachment affords a common instance to show the difference between an *ex parte* affidavit and an affidavit to a fact put in issue by the controversial pleadings of the parties in the cause on trial. An *ex parte* affidavit, stating the necessary facts, is sufficient to authorize the issuing of a writ of attachment against the goods of the debtor. No one would claim that, for that purpose, it is necessary that the affidavit should show that it was all the evidence given to authorize the writ; but if the facts contained in the affidavit are put in

issue between the parties on the trial of the cause, as they may be, the affidavit, for the purposes of that issue, will not be held as *prima facie* true; and, if such issue is brought before this court upon the question of fact, the bill of exceptions must show that it contains all the evidence; but if the question of the sufficiency of the facts stated in the affidavit to authorize the issuing of the writ, is brought before this court, it is not necessary that the bill of exceptions should show that the affidavit contained all the evidence of the facts upon which the writ of attachment was issued.

We think the rule should be, that, where an affidavit is filed on which a motion is based, and the court passes upon the motion, it will be presumed that the affidavit was the sole ground on which the court acted—the record showing nothing to the contrary—although the motion was one which admitted of counter affidavits, or other contradicting evidence.

We have thus particularly explained, in theory, what we supposed was well understood in practice, not that we deemed the question so important, but that we felt that the explanation was due to the earnestness of the counsel who prepared the petition, which is now overruled.

The Board of Commissioners of Vigo County v. Fischer²⁶

Payment for services as township trustee includes payment as overseer of the poor.

HowK, J.: The appellee presented to the appellant an account or claim for services rendered by him as overseer of the poor. The appellant made an order to the effect that the claim should not be allowed, and from this order the claimant, Fischer, appealed to the circuit court of the county. There, the appellant demurred to the appellee's claim or account, for the want of sufficient facts therein to constitute a cause of action, which demurrer was overruled by the court, and to this ruling appellant excepted. An answer was then filed in two paragraphs, to wit: 1. A general denial; and, 2. Payment in full for the services mentioned in appellee's claim. The cause was tried by the court, and a finding was made for the appellee, in the full amount of his claim. Over the appellant's motion for a new trial, and its exception saved, the court rendered judgment for the appellee, in accordance with its finding.

The first error assigned by the appellant, in this court, is the overruling of its demurrer to the appellee's cause of action. The account and claim of the appellee against the appellant were, in substance, as follows:

"The Board of Commissioners of Vigo County,

To Frederick Fischer, Dr.

"To services as overseer of poor, from October 20th, 1874, to May 20th, 1878, at one dollar per day, for 1075 days, as provided by act for relief of poor, approved June 9th, 1852, section 20, 1 R.S. 1876, p. 680. \$1,075.00

"I certify that the above account is just and unpaid.

(Signed) "FREDERICK FISCHER,

"Trustee Harrison Township."

²⁶ 86 Indiana 139 (1882).

"Frederick Fischer says, that he is ex-trustee of Harrison township, in said county; that the bill heretofore filed, and of this made a part, was for services rendered as overseer of the poor; that said township embraces the city of Terre Haute, containing a population of 25,000 souls; that the services rendered as such overseer occupied times not set out under the duties of trustee; that during the whole time of his said office, which embraced four years, he was occupied during nights, Sundays, and all unseasonable hours, in discharging his said duties as overseer, answering calls of tramps, widows, orphans, needy and helpless; and that the said county has never paid him for said services. Wherefore he asks that he be paid said sum as set out and as asked for."

The question for decision is this: Does this complaint or claim state a cause of action against the appellant? The question is not free from difficulty, because of the fact that there is some confusion in the statutory provisions bearing on the subject. With no little doubt and hesitancy, we have reached the conclusion, that, for the services rendered by appellee, as stated in his complaint, he has no valid, or legal claim against the appellant. This conclusion is in harmony with, and supported by, the opinion of this court, in *Tilford, Auditor, v. Douglass, Trustee*, 41 Ind. 580. It was there said: "It is also claimed that the expenses of the poor are all paid out of the county treasury, and not out of the township fund. This seems true as to the disbursements for the relief and support of the poor, but not, we think as to the pay of the trustee for his services as overseer of the poor. To act as overseer of the poor is, as we have seen, one of his duties as trustee, and for all his services as trustee, as we have shown, he is paid out of the township fund."

In the case cited, the court placed a construction upon the same statutory provisions, in relation to the duties and compensation of township trustees, which were in force during all the time mentioned in the appellee's claim. When the conclusion is reached that, under the statute, it is one of the duties of the township trustee to act as overseer of the poor, then it would seem to follow that, for the services of the trustee in the discharge of his duties as overseer of the poor, his compensation must be limited to the *per diem* fee of the township trustee. Especially so, as the fee and salary act of March 12th, 1875, and the fee and salary act of March 8th, 1873, which two acts covered the entire time mentioned in appellee's claim, both declared in effect that the township trustee should be allowed for his services the *per diem* fees set forth in the acts, and no other. In each of those acts it was expressly provided that the *per diem* fee of the township trustee for his services, as stated therein, should "be paid out of the township fund."

We are of the opinion, therefore, that the appellee's claim or complaint did not state facts sufficient to constitute a cause of action against the appellant, and that its demurrer thereto ought to have been sustained. The facts stated show that appellee's claim, if any he has, for the services mentioned there, can only be asserted under the law against Harrison township.

In the view we have taken of the question for decision, in this case, we are strongly sustained, as it seems to us, by the provisions of section 32 of the fee and salary act of March 31st, 1879, which act was passed subsequently to the time covered by appellee's claim. In this section 32, it was provided as follows:

"The *per diem* of township trustees shall be as follows, to wit: For each actual day's service they shall be allowed to be paid out of the township fund \$2.00: *Provided*, That for all services as overseer of the poor said township trustees shall be paid out of any funds in the county treasury not otherwise appropriated, on the order of the board of county commissioners." Acts 1879, p. 142.

In this section, the *per diem* allowance of township trustees, to be paid out of the township fund, is materially reduced from what it had been under the laws in force during the entire term covered by appellee's claim. The language of the proviso, in section 32, is clearly prospective in its operation. In view of this proviso, it may well be regarded, we think, as a new and substantive provision, intended to compensate the township trustees, to some extent, for the reduction made in their *per diem* allowance. It is very clear, from the language of this proviso, that the General Assembly did not consider the township trustees entitled to any compensation for their services as overseers of the poor, under then existing or prior legislation, other than their *per diem* allowance, to be paid out of the township fund.

This conclusion renders it unnecessary for us to consider the alleged error of the court in overruling the motion for a new trial.

The judgment is reversed, with costs, and the cause remanded with instructions to sustain the demurrer to the complaint, and for further proceedings.

Board of Commissioners of Orange County v. How²⁷

A statement of claim by medical practitioners for payment for services rendered the poor should contain information with reference to the amount and character of the services to serve as basis for determining the amounts due.

WOODS, C.J.: The appellee filed before the board of commissioners of Orange county the following statement of a claim, to wit:

"No. 3.

March 28th, 1881.

"To Dr. Benton J. Hon: You are hereby authorized to render the necessary medical attention to Solomon Sweeny at the prices fixed by the board of county commissioners.

"JOHN O. ELROD, Trustee Orleans Township.

"ORLEANS, IND., June 6th, 1881.

"ORANGE COUNTY, DR. To BENTON J. HOW.

"Medical attention rendered Solomon Sweeny, as per rendered statement below, \$20."

(Itemized statement omitted.)

Signed and verified.

²⁷ 87 Indiana 356 (1882).

The commissioners rejected the claim, and in the circuit court, to which the claimant appealed, demurred to the complaint, for want of facts sufficient to constitute a cause of action. Our conclusion is that the demurrer should have been sustained. Strict formality and technical accuracy in the statement of a claim presented to a board of commissioners for allowance is not required; but enough must be alleged to show, by fair intendment at least, that the county is liable for the payment of the demand, else the board may properly reject it without inquiry into the facts on which it is predicated.

All claims against a county must be presented to the county board. R.S. 1881, section 5758. No other tribunal has original jurisdiction, and if the claim be not allowed, the remedy is by appeal alone; and inasmuch as the proceedings on appeal must be had on the statement of the demand presented to the board, it ought to contain the substantial requisites of a complaint. If defective, it may, of course, be amended. In cases wherein ordinarily a demand would be necessary before bringing an action, the presentation of the claim for allowance would be sufficient, and no averment or proof of a prior demand would be necessary. *Board, etc. v. Miller, ante*, p. 257; *Trimble v. Pollock*, 77 Ind. 576.

By section 5764 of R.S. 1881, it is made the duty of the county board to contract with one or more physicians to attend upon all prisoners in jail or paupers in the county asylum, and such board "may also contract with physicians to attend upon the poor generally in the county; and no claim of a physician or surgeon, for such services, shall be allowed by such board except in pursuance of the terms of such contract: *Provided*, That this section shall not be so construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require."

The township trustee is the lawful overseer of the poor of his township, and is enjoined to see that they are properly relieved and cared for in the manner required by law. R.S. 1881, sections 5994, 6071.

In the case of *Board, etc. v. Boynton*, 30 Ind. 359, it was held, and we think correctly, that, under these provisions of the law, the trustee has power to employ physicians only in the event the commissioners fail to do so. Outside of these provisions there can be no liability of the county for the services of physicians or surgeons. The general rule is that one who seeks to hold a principal for the acts or contracts of an agent must allege and prove the agent's authority to do the act or to make the particular contract. The authority of a public agent, so far as defined by law, need not be averred, as the courts must take notice of the law; but where, by the terms of the law, certain facts or conditions must exist in order to confer or invoke the authority of a particular agent to act in the particular case, the facts or conditions must be averred by him whose right of action depends on such authority.

The complaint before us is defective in many particulars; it contains no allegation that the order attached to the statement of the claim is made a part of the

statement; nor that the order was made by any one; nor that the person, if there was one, whose name was signed to it, was at the time the trustee of the township; nor that the services were rendered in pursuance of the order or employment of such trustee; nor that the individual treated was a poor person; nor that the county had not employed a physician, who was ready to perform the service.

It is claimed upon the authority of the case of *Commissioners, etc. v. Holman*, 34 Ind. 256, that the employment of the appellee by the township trustee is conclusive upon the county; but in this complaint it is not alleged that the appellee was employed by the township trustee; besides, the case cited decides only that the decision of the trustee was final in respect "to the necessities of the persons relieved"; that is, that they were poor persons, and needed treatment; but the decision can not be carried to the extent of saying that the trustee may decide that the county board has not employed a physician for his township, therefore he has power to employ physicians for the treatment of particular cases. When, by failure of the board to employ a physician, the power of the trustee arises, his decision in respect to matters within his discretion should be conclusive; but he can not, in the absence of the conditions on which he is authorized to act, by assuming power acquire it.

The record presents another question which is of practical importance, and, in the event of another trial, may arise again in this case, and that is, whether or not the court erred in refusing a jury trial at the demand of the appellant. The record shows that upon the request of the appellant for a jury trial, the jury was called and the panel filled with householders and voters of the county, all qualified to serve as jurors except that they were resident taxpayers, and to that extent interested in the result of the suit. Thereupon the appellee challenged each juror for that cause; the court allowed the challenge, and caused the panel to be filled a second time, when the plaintiff repeated his challenge, which the court sustained, and, over the objection and exception of the appellant, proceeded to hear and determine the cause without the aid of a jury. It is claimed that this action is supported by the decision made in the case of *Board, etc. v. Loeb*, 68 Ind. 29; but in that case it was the part which demanded a jury trial that insisted upon the technical disqualification of every juror called into the box, and, besides, gave notice that the same objection would be made to any jurors which might be called; and thereupon the court notified the party that if a change of venue were not moved for the cause would be set down for trial without a jury; and the defendant having refused to ask the change, the court tried the cause, and the action was upheld.

This case is different, and so essentially different that we are not willing to declare it within the ruling cited. The appellant was entitled to a jury trial; it was a constitutional right; R.S. 1881, section 65; and it did nothing to forfeit the right. It was not bound to ask a change of venue; and if the appellee deemed the jurors of the county disqualified on account of their interest in the result of the action, he should have applied for the necessary change. Indeed, in the case

cited, the plaintiff might have taken the same course, and it is difficult to see why, on principle, the defendant, by insisting on the right of challenge, should have been held to the necessity of asking a change of venue, in order to be entitled to another right which is unconditionally guaranteed by the fundamental law. If either right could properly have been denied, it would seem more reasonably to have been the right of challenge, with the exercise of which the demand for a jury was inconsistent.

Judgment reversed, with instructions to sustain the demurrer to the complaint.

The Board of Commissioners of Morgan County v. Seaton²⁸

Although the county has made a contract for medical services to the poor, if the physician refuses to act in a particular case and the Township Trustee calls in another physician, the county is liable.

BICKNELL, C.C.: This was a claim by the appellee against the appellant for medical attendance upon two paupers, at the request of the township trustee. The county board refused to allow the claim; an appeal was taken to the circuit court; there the appellee had a finding for \$67.75. A motion for a new trial was overruled; judgment was rendered on the finding, and the county appealed.

The errors assigned are:

1. Overruling the motion for a new trial.
2. The court erred in assuming jurisdiction of said cause, when, as shown by the record, the same was not properly before it on appeal from the commissioners' court.
3. The court erred in assuming jurisdiction and sitting as judge of the Morgan Circuit Court, when the sitting judge was not incompetent, and in the absence of an agreement by the parties to that effect.

The record, however, does not show want of jurisdiction; this was a case in which a judge might have been lawfully appointed, and no objection to the jurisdiction was made below. Where a cause is tried and may be tried before an appointee, and his authority is not objected to in the court below, it can not be assailed in this court. *Winterrowd v. Messick*, 37 Ind. 122; *Kennedy v. State*, 53 Ind. 542.

The reasons alleged for a new trial were:

1. The finding was contrary to law.
2. The finding was contrary to the evidence.

The question is, was the county bound to pay for the services in controversy under section 1 of the act of March 5th, 1859, which is the same as section 5764 R.S. 1881?

This section declares that the county board shall contract with physicians to attend to the county poor, and that no physician's claim for medical services shall be allowed by the board, except in pursuance of the terms of such con-

²⁸ 90 Indiana 158 (1883).

tract: "Provided, That this section shall not be so construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require."

Township trustees are overseers of the poor within their respective townships. R.S. 1881, section 6066. Where the county has not employed a physician to attend to sick paupers outside of the poor-house and jail, the township trustee has authority to employ a physician for such persons in his jurisdiction. *Board, etc. v. Ford*, 27 Ind. 17; *Board, etc. v. Boynton*, 27 Ind. 19.

And although the county has employed a physician to attend to the county poor generally, yet, if he should abandon his contract, the township trustee may provide other necessary medical attendance for the sick poor of his township. *Conner v. Board, etc.*, 57 Ind. 15.

The question as to the necessities of the persons relieved is a matter for the determination of the trustee, and, in the absence of fraud or collusion, his determination is conclusive. *Commissioners v. Holman*, 34 Ind. 256.

The question whether the township is "not otherwise provided for" is a question of fact. *Board, v. Boynton*, 30 Ind. 859.

In the present case, the finding for the appellee was substantially a finding that the township was "not otherwise provided for."

The evidence tended to sustain the finding. It appeared that the sick persons treated by the appellee had typhoid fever, and required the attendance of a physician twice a day, and that the person employed by the county to attend to the county poor lived too far away to give these persons such medical service as they required.

The finding was not contrary to evidence, nor contrary to law. There was no error in overruling the motion for a new trial. Judgment ought to be affirmed.

Per Curiam.—It is therefore ordered, on the foregoing opinion, that the judgment of the court below be and the same is hereby in all things affirmed, at the costs of the appellant.

Board of Commissioners of Orange County v. Ritter et al.²⁹

This is really a case in pleading. How much must the claimant allege in suing for compensation for medical services with reference to the failure of the county to provide such services.

Howk, J.: The appellees, John A. Ritter and Theophilus P. Carter, under the firm name of Ritter & Carter, presented to the appellant for allowance two claims or accounts, each for medical and surgical services rendered by them, at the request of the township trustee, to paupers of Orange county. Each of these claims was disallowed by the appellant, and from its action in each case an appeal was taken by the claimants to the circuit court of the county. The two

²⁹ 90 Indiana 362 (1883).

cases were there pending on the 23d day of January, 1882, at an adjourned term of the court, and, by agreement of the parties, were then and there consolidated.

Issues were formed in the consolidated cause, and were submitted to a jury for trial, and a verdict was returned for the appellees, assessing their damages in the sum of \$55.50. Over the appellant's motion for a new trial, and its exception saved, the court rendered judgment against it and in appellees' favor for their damages and costs.

In this court the appellant has assigned the following errors:

1. The complaint does not state facts sufficient to constitute a cause of action;
2. The court erred in overruling the demurrer to the complaint, and,
3. The court erred in overruling the motion for a new trial.

The first two of the alleged errors call in question the sufficiency of the appellees' cause of action or claim against the appellant, the one before, and the other after, the verdict of the jury. As we have already said, the appellees, in their firm name of Ritter & Carter, presented to the appellant, for allowance, two claims or accounts, in substance as follows:

1. *"Orange County, Indiana, to Ritter & Carter, Dr.*

"To services rendered Ide Beck, June 17th, 1881, accouchement of wife. . . .	\$10.00
"To services rendered Samuel Owens, pauper, adjusting fracture of femur, March 8th, 1881.	10.00
"To services rendered Sarah Hanmer, pauper, accouchement and delivery with instruments, February, 1881.	25.00
"Total.	\$45.00"

This account was verified by the affidavit of John A. Ritter, and is followed in the record by an order as follows:

"OFFICE OF TRUSTEE OF ORANGEVILLE TOWNSHIP,

"ORANGE COUNTY, IND., June 17th, 1881:

"Dr. JOHN A. RITTER: You are hereby authorized to attend the wife of Ide Beck, a poor person of this township, during her sickness, which is now imminent, and charge the same to account of Orange county.

"Respectfully and truly yours,

(Signed) "WILL T. HICKS, Trustee."

Then follows in the record a certificate in substance as follows:

"ORANGEVILLE, IND., September 6th, 1881.

"To the Board of Commissioners of Orange County:

"The claim of Dr. John A. Ritter for attention given to Samuel Owens, a pauper, broken leg, last February, and also to Sarah Hanmer, a pauper, childbirth, same month, is just and should be paid. (Signed) WILL T. HICKS,

"Trustee Orangeville Township."

2. Appellees' Second cause of action was stated substantially as follows:

"PAOLI, IND., September 6th, 1881.

Orange County, Indiana, to John A. Ritter and Theophilus P. Carter, partners, doing business under the name of Ritter & Carter, Dr.

"To services rendered James Mitchell, pauper.

(Items omitted from January 26th to March 28th, 1881). Total.....\$35.00."

This claim was verified by the affidavit of John A. Ritter, and with it was filed an order in substance as follows:

"NORTHWEST TOWNSHIP, February 3d, 1881.

"DR. JOHN A. RITTER—SIR: You are authorized to give James Mitchell, a pauper of this Northwest township, such medical and surgical aid as his case demands.

(Signed) "JAMES W. MCCAULEY,

"Trustee Northwest Township."

In discussing the sufficiency of the appellees' claim or cause of action, the appellant's counsel says: "The point we desire to make against the complaint is, that before a physician can recover in an action against a board of commissioners for medical services rendered to the poor, he must allege in his complaint, and prove on the trial, that the board of commissioners had made no provision for medical attendance on the poor of the township wherein the services were rendered, or that there existed such an emergency as precluded the attendance of the regularly employed physician."

What must be alleged in appellees' claim or cause of action is properly called in question by the first two alleged errors; but neither of these errors presents any question in relation to what the appellees must "prove on the trial." Appellant's counsel bases his argument against the sufficiency of appellee's claim or cause of action in this case upon the provisions of section 5764, R.S. 1881. This section took effect on the 5th day of March, 1859, and has never been expressly repealed. In this section it is provided as follows:

"It is hereby specially made the duty of such board to contract with one or more skilful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum, and" (the board) "may also contract with physicians to attend upon the poor generally in the county; and no claim of a physician or surgeon, for such services, shall be allowed by such board except in pursuance of the terms of such contract: *Provided*, That this section shall not be so construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require."

Counsel says, *arguendo*: "Under the provisions of this section, it would seem that a complaint, to show a good cause of action against a board of commissioners, should negative the existence of the very state of facts which, if they do exist, would prohibit the board from making any allowance for such services. If such allegations are necessary in any action originally instituted in the circuit court,

no reason is apparent why they are not as essential in a claim filed before the board of commissioners."

The gist of this argument, as we understand it, as applied to the case in hand, is, that appellees' claims against the appellant were bad on demurrer thereto, for the want of facts, because they did not contain a negative averment to the effect that at the time the services were rendered the appellant had not provided by "contract with one or more skilful physicians, having knowledge of surgery," for such medical and surgical services to the paupers in the townships mentioned as they required. We are of opinion, however, that such a negative averment was not at all necessary to the sufficiency of appellees' claim or cause of action, even if the suit thereon had been "originally instituted in the circuit court." In section 6071, R.S. 1881, in force since May 6th, 1853, it is provided as follows: "The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner required by law." In *Conner v. Board, etc.*, 57 Ind. 15, on the subject of the employment of such medical or surgical services as paupers may require, this court said:

"The spirit and intention of the legislation of this State, on this subject, seem to require that the paupers of each county shall, in any event, receive necessary medical or surgical attention, at the expense of the county. The county board may 'contract with physicians to attend upon the poor generally in the county,' and, in case of such contract, the law provides, that 'no claim of a physician or surgeon for such services shall be allowed by such board except in pursuance of the terms of such contract.'" Section 5764. "The expense of all such services, under such employment, is a proper charge against the county."

It will be observed that section 5764, by the express terms of its proviso, "shall not be so construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require." In the light of this proviso, as construed with other statutory provisions on the same subject, we are of opinion that the appellees' claims, in this case, were sufficient to withstand the demurrer thereto; and that the fact, if it were the fact, that the appellant had, at the time specified in such claims, a "contract with physicians to attend upon the poor generally in the county," was not a fact to be negatived by the appellees in their claims, but it was one to be shown by the evidence of the appellant as matter of defence.

Under the provisions of section 5761, R.S. 1881, in force May 6th, 1853, and still in force, "the claimant shall file with such commissioners a detailed statement of the items and dates of charge." This is all the complaint or cause of action the statute requires, or has required for more than thirty years, in such a case as the one at bar. In *Board, etc. v. Wood*, 35 Ind. 70, the appellee's claim or cause of action was an itemized account, and, upon demurrer thereto, this court said: "The facts stated in the claim, or account, are sufficient. No formal

complaint in such a case is necessary. In presenting claims to the board of commissioners for allowance, it is sufficient to make out the account in the form used in this case, and the law does not contemplate the filing of a new complaint in the appellate court." So, in *Board, etc. v. Shrader*, 36 Ind. 87, where the appellee's claim or cause of action was a mere statement of account, and it had been assigned as error that the claim did not state facts sufficient to constitute a cause of action, this court said: "We think this claim was sufficient. It was not necessary to allege in it all steps, which the law required to be taken to render the county liable. Under the allegation that the county was indebted to him, we think the claimant might introduce evidence of the facts necessary to show the liability." So, also, in *Board, etc. v. Adams*, 76 Ind. 504, this court said: "Fault is found with the structure of appellee's claim or complaint, and doubtless, if the action had been commenced in the circuit court, the criticism of counsel would have prevailed. The same strictness in pleading is not, however, required in the commissioners' court as in courts of general superior jurisdiction. In the case of *The Board, etc. v. Wood*, 35 Ind. 70, it was said: 'No formal complaint, in such a case, is necessary.' A claim in the form of an ordinary account is sufficient. *The Board, etc. v. Shrader*, 36 Ind. 87; *Jameson v. The Board, etc.*, 64 Ind. 524."

It is clear, we think, from the language of the statute and from the previous decisions of this court, that the appellees' claims in the case in hand stated facts sufficient to constitute causes of action, and that the demurrer thereto were correctly overruled.

A careful examination of the record of this cause has led us to the conclusion that there is no error therein which authorizes or requires the reversal of the judgment.

The judgment is affirmed, with costs.

Robbins v. Board of Commissioner of Morgan County³⁰

When the county had made ample provision for medical care for temporary as well as permanent poor, the township trustee cannot bind the county for other services.

HAMMOND, J.: Appellant filed his claim before the Board of Commissioners of Morgan County for medicines furnished, and medical services rendered, to certain poor families in Brown township, in that county, at the instance of township trustee. His claim not being allowed, he appealed to the court below. The case was tried by the court, and, at the request of the parties, the court found the facts specially, and stated its conclusions of law thereon, in writing.

The following are the findings of facts and conclusions of law:

"1. That in the year 1882 the plaintiff was and yet is a reputable and practicing physician residing at Mooresville, in Brown township, Morgan county,

³⁰ 91 Indiana 537 (1883).

Indiana, and during said year, as such physician, plaintiff furnished medicines and rendered medical assistance to William Kays and his family, and to the family of John Crayton, who were then and there temporary poor of Brown township in said county.

"2. That said services and medicines were so furnished and rendered by the plaintiff, under the employment and by authority of Thomas A. Richardson, who was then and there the trustee of said Brown township in said county; that said poor persons were sick, and needed proper medicines and medical attention.

"3. That said medicines and medical attention are worth the sum charged therefor by plaintiff, viz.: 62 $\frac{25}{100}$ dollars, and the same is due and wholly unpaid.

"4. That prior to and at the time said services were rendered by the plaintiff, the board of commissioners of said county had employed by the year four reputable, well qualified physicians and surgeons, viz.: Drs. Benj. Perce, Amos W. Reagan, Philip McNab and John M. Snoddy, all residing at the same place with the plaintiff, to attend to all the medical and surgical wants and cases of the temporary poor of the township in which the persons resided who were attended by the plaintiff, and embracing all the items in plaintiff's account herein.

"5. That said physicians were able and capable to render the services for which plaintiff claims judgment herein.

"6. That said physicians, nor either of them, were notified by said trustee, nor by any one else to perform such services.

"7. That this plaintiff had no knowledge that either of said physicians were, or were not, so notified.

"8. That said provision by said board of commissioners for the medical attendance upon all the temporary poor of said township where said poor persons were treated by plaintiff, and for which he brings his action, were ample and sufficient.

"Upon the foregoing special finding of facts the court renders the following as its conclusions of law:

"That plaintiff is not entitled to recover of said defendant for the services rendered and medicines furnished, which are claimed in this action, and that no liability exists upon the part of the defendant therefor.

"AMBROSE M. CUNNINGHAM, Judge."

The appellant excepted to these conclusions of law. He assigns in this court the following error: "The court below erred in its conclusions of law upon its special finding of the facts." The following sections are copied from the Revised Statutes of 1881:

"6066. The township trustees of the several civil townships of this State shall be the 'overseers of the poor' within their respective townships, and shall perform all the duties with reference to the poor of their respective townships that may be prescribed by law."

Section 6069 requires every county to relieve and support all poor and indi-

gent persons lawfully settled therein whenever they stand in need of such relief and support.

"5764. It is hereby specially made the duty of such board" (the board of county commissioners), "to contract with one or more skillful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum, and may also contract with physicians to attend upon the poor generally in the county; and no claim of a physician or surgeon, for such services, shall be allowed by such board except in pursuance of the terms of such contract: *Provided*, That this section shall not be so construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require."

It is manifest from the above that the support of the poor is made a county, rather than a township, charge. The township trustees in their respective townships perform such duties only with reference to the poor as may be prescribed by law. The county board may contract with physicians to attend upon the poor generally of the county. In the absence of such contract, trustees, in their respective townships, may, at the expense of the county, employ such medical and surgical services as the paupers within their jurisdiction require. But their authority to make such employment exists only where the county board has failed to engage medical services for the poor generally in their townships. The agency of the township trustee in this respect is special. If he exceeds his authority, the county is not bound. Those who accept employment from him for medical attendance upon the poor, must, at their own risk, enquire into his power to bind the county.

The decisions of this court fully sustain these views. *Mullen v. Board, etc.*, 9 Ind. 502; *Board, etc. v. Wheeldon*, 15 Ind. 147; *Board, etc. v. Boynton*, 30 Ind. 359; *Conner v. Board, etc.*, 57 Ind. 15.

The facts found specially by the court show that the appellant's employment by the township trustee to render the medical services to the poor, for which he sues the county, was not authorized by statute. The county board had already made ample provision by the employment of competent physicians and surgeons for the medical wants of the poor of that township. The county was not liable, therefore, for the payment of the appellant's services. The court below did not err in its conclusions of law.

Judgment affirmed, at appellant's costs.

The Board of Commissioners of Howard County v. Jennings³¹

Another question in pleading. Must the declaration show settlement, etc.? The court says that if the services are described, factors in eligibility shall be proven. There is also a question of evidence. What constitutes authorization by the trustee?

³¹ 104 Indiana 108 (1885).

MITCHELL, J: At the December term, 1883, Margaret E. Jennings presented a claim to the board of commissioners of Howard county. She asked to be allowed for seven weeks' board, and for services in caring for Grant Davis. Her claim was disallowed by the board, and upon appeal to the circuit court it was amended, and was then stated as follows:

"Howard County, Indiana, To Margaret E. Jennings, Dr.

"For boarding, nursing and washing for Grant Davis, a person unable to sustain himself, from October 18th, 1883, to December 6th, 1883, being 7 weeks, while he was under treatment for fracture of the left leg and ankle, at \$10 per week. . \$70

"To 2 weeks' board, from December 6th, 1883, to December 20th, 1883, at \$5 per week. \$10

\$80."

The claim was duly verified, and the township trustee of Liberty township certified that the time charged for was correct.

A demurrer was filed to the claim as amended, and there was also a motion to strike it out. Both the demurrer and motion were overruled, and it is now argued that these rulings were erroneous.

Counsel contends that the claim states no cause of action against the county, and he assigns as reasons: 1. That it does not appear that the overseer of the poor contracted with Mrs. Jennings to board and care for Grant Davis. 2. That it is not stated that Davis was an indigent person, lawfully settled in Howard county. 3. That the statement of the claim is too indefinite.

It is also argued that it appears, or may be inferred, from the statement of the claim, that the services were voluntarily performed, and that, in consequence, no appeal lies from the order of the board refusing to allow it.

In the case of *Board, etc. v. Ritter*, 90 Ind. 362, the requisites of a complaint in a cause originating before a board of commissioners were fully considered, and the ruling there, as in many other cases, is, that no formal complaint is necessary; all that is required is a detailed statement of the items and dates of charge. Upon such a statement, all the evidence necessary to show the liability of the county is admissible. *Board, etc. v. Armstrong*, 91 Ind. 528; *Board, etc. v. Gillum*, 92 Ind. 511; *Board, etc. v. Emmerson*, 95 Ind. 579.

The account filed was sufficiently formal and definite, and the demurrer and motion upon which error is predicated were properly overruled.

Upon the evidence, the court found in favor of the claimant, and gave judgment against the county for sixty-seven dollars. It is insisted that the evidence does not sustain the finding.

It appeared that Grant Davis, a boy about eighteen years old, resided at Elwood, in Madison county. In October, 1883, while engaged at work for Mr. Jennings, in Howard county, he was in some way caught by a belt in a mill and severely hurt. He sustained, among other injuries, a compound fracture of the leg. Being without means, and, so far as appears, without friends who were able to care for him, and too severely hurt to be moved any distance, he was taken

to the house of Mr. Jennings, where he was confined to his bed, unable to help himself, for about seven weeks. After that he was confined to the house for about two weeks more. Mrs. Jennings and her daughter, during all this time, gave him such nursing, care and attention as his condition required. It is admitted of record that the amount claimed is reasonable.

It was clearly proved that the boy was without means, and no friends except Mrs. Jennings and her family appeared to help him or care for him.

Shortly after the injury, Mr. Jennings, at the request of his wife, saw the township trustee, and inquired of him what should be done in reference to the boy. The trustee gave no answer, but said he would see about it. Soon after, the trustee told him that the only way to do was "to lay in a bill to the county commissioners," and that the commissioners would make her an allowance, that he would certify to the correctness of the amount of services—that he would certify to the bill.

The trustee himself testified that when the injury occurred he was away from home, and did not return for some days. Shortly after his return Mr. Jennings asked how he would be paid for taking care of the boy. "I said that if the boy had nothing, no means of his own, to come down and I would assist him in making out a bill; that the allowance would have to be made by the county commissioners."

The trustee testified further that he did not ask Mr. Jennings to keep the boy, but he gave as a reason that he saw him there, and that he was not in a condition to be moved. It seems to have been assumed by the trustee that the boy would be kept and cared for by the Jennings family; and we think that from all that was said by the official they had a right to assume that their keeping him was authorized by the trustee, and that they would be paid for it.

We think, therefore, that upon the evidence the court below may well have found, as it unquestionably did, that the services were not voluntarily performed, but that they were performed under the direction of the township trustee.

That the home of the unfortunate lad was in Madison county was no impediment in the way of a trustee in Howard affording him temporary relief, Section 6089, R.S. 1881, made it the duty of the trustee, as overseer of the poor, upon receiving information that any person not an inhabitant of the township was sick or in distress, and without friends or money, and likely to suffer, to examine into the case and grant such temporary relief as the nature of the case might require. That Mrs. Jennings had received the boy into her house, and was kindly caring for him when the trustee was made aware of the necessities of the case, did not prevent him from recognizing what she had done, and providing for future needed care.

We think, under the section of the statute above referred to, the township trustee was authorized to grant temporary relief, and that under the same section it was the duty of the board of commissioners of Howard county to examine

the claim, and if found reasonable allow and order the claim paid. *Board, etc. v. Rogers*, 17 Ind. 341; *Board, etc. v. Wright*, 22 Ind. 187.

For services rendered in like cases, without the authority or direction of the township trustee, counties are not liable; but when, as in this case, such services are properly authorized, there should be no hesitancy in paying what they are reasonably worth.

That the judgment for costs was made collectible without relief may have been erroneous, but as there was no motion below to correct it, the error is not available here.

Judgment affirmed, with costs.

Washburn v. The Board of Commissioners of Shelby County³²

Where the physician employed by the county refuses to treat a poor person who is in urgent need of medical attention, the township trustee has authority to employ another physician.

ELLIOTT, J.: In the fall of 1882, Benjamin C. Allen, a poor person, had his hand so seriously injured in a saw-mill as to make it necessary to amputate it. The appellant was a physician, living at Waldron, Liberty township, Shelby county, and while at supper he was called to attend to Allen, whom he found sitting on the step of his office waiting for him. The messenger who had called the appellant asked the latter if he did not need assistance, and receiving an affirmative answer, he summoned Dr. McCain the physician employed by the county to attend the poor. Dr. McCain was asked to attend to the patient, but peremptorily refused for the reason that Dr. Washburn had been first called to the case. The township trustee was informed by Dr. Washburn that he had amputated Allen's hand, and the trustee said to him, that he had commenced the case and "must go ahead with it."

The appellant offered to prove what was said by the trustee concerning paying for the services rendered Allen, but the court excluded the evidence.

We do not think that the fact that the appellee demurred to the appellant's evidence precludes him from availing himself of a ruling excluding competent evidence. To hold that a party by demurring to evidence may render unavailing a ruling, made against his adversary, excluding competent testimony, would work great injustice, for, by so holding we should lay down a rule that would enable a defendant to secure erroneous rulings on the admission of evidence, and then, by demurring to the evidence admitted, deprive the plaintiff of the benefit of the rulings excluding evidence, however erroneous they might be, and however great the injury done to him by such rulings. The case is not at all like that of the demurring party asking a review of rulings upon the admission and exclusion of evidence, for he, by his own act, submits the cause for decision upon the evidence received by the court, and thus impliedly waives all questions upon rulings

³² 104 Indiana 321 (1885).

made in the course of the trial, but his adversary does no affirmative act waiving rulings to which he has reserved proper and timely exceptions. If the rule were that the party compelled to join in the demurrer to the evidence waived all questions reserved upon rulings made in the course of the trial, then he would be completely at the mercy of his adversary and might be deprived, without any fault on his part, of the evidence upon which his case depended. We hold that a defendant who demurs to the evidence can not deprive the plaintiff of the right to make available questions upon rulings excluding evidence.

We think that the declarations of the township trustee ought to have been admitted. There was testimony tending to prove that the case was one of emergency, that the physician employed by the county had refused to treat the injured man; and in such a case the township trustee, who is by virtue of his office overseer of the poor, had authority to sanction the employment of another physician. We do not hold that in ordinary cases the township trustee has authority to call in any other physician than the one employed by the county. On the contrary, our opinion is that in ordinary cases he has no authority to call any other than the physician engaged by the board of commissioners. Where, however, that physician refuses to act, and there is a case requiring immediate treatment, the township trustee may call another physician. We can not believe that the law intended that a poor man or woman urgently in need of medical or surgical attention should be left to suffer in cases where the county physician refuses to render professional services. The authority to take measures to prevent, if possible, suffering and death, must be lodged in some local officer, for it certainly was never intended that the sufferer should wait until the board of commissioners could be called together and an order obtained authorizing the employment of a physician.

The decided cases support the views we have expressed. Thus, in *Board, etc., v. Seaton*, 90 Ind. 158, it was held that the trustee might employ a physician in a case where the county physician lived so far distant from the sick person as to be unable to give the sick person the attention he required. It was held in *Conner v. Board, etc.*, 57 Ind. 15, that where the county physician abandoned his contract, the trustee might employ another physician. The decision in *Board, etc., v. Ritter*, 90 Ind. 362, affirms that there are cases in which the township trustee, as overseer of the poor, has authority to employ a physician although one had been previously employed by the county. The decision in *Board, etc., v. Boynton*, 30 Ind. 359, correctly states the general rule, that where a county physician has been employed, the township trustee can not employ another, but that decision does not apply to a case where the county physician refuses to render service to a poor person needing immediate attention.

The trial court erred in not admitting in evidence the declarations of the township trustee, and the judgment is reversed, with instructions to grant the appellant a new trial.

(Filed Dec. 8, 1885; motion to modify judgment overruled Dec. 29, 1885.)

Summers v. The Board of Commissioners of Davies County³³

Where the County Commissioners exercise due care in the selection of a medical practitioner, no action lies against them for failure of skill on the part of the practitioner selected.

ELLIOTT, J.: The appellant alleges in her complaint that she fell and broke her leg; that she was poor and unable to procure a surgeon to attend her, and that James F. Parks was employed by the county to give medical and surgical attention to those who were too poor to employ physicians and surgeons. It is also averred "that James F. Parks, at the time he was employed, was not a skilful physician having a knowledge of surgery, but, on the contrary, was unskilful in the profession, and had no knowledge of surgery, and was incompetent to intelligently perform the duties of a physician and surgeon." It is further alleged that Parks was called upon to attend the appellant, and that his want of knowledge and lack of skill were such that he so unskilfully and improperly treated her as to do her great injury.

If, in any case, a recovery could be had against the county for the unskilful and improper manner in which a surgeon treated an injured poor person, it is clear that there can be none in this, for it does not appear that the board of commissioners did not exercise care and diligence in the selection of the physician for the poor. Where care and diligence are used in the selection of a physician the officers representing the county have done their duty, and where there is no breach of duty there can be no negligence. Mere errors in judgment do not constitute negligence.

We put our decision on broader grounds. The commissioners are public officers, charged with the performance of public duties, and in the performance of public duties they are not mere agents. It is true that officers occupying positions similar to those held by county commissioners are often spoken of as agents, and, in some cases, it is, perhaps, proper to treat them as agents. But even when such officers are regarded as agents, a broad and important difference is noted between public and private agents, and essentially different rules govern the two classes. *Newman v. Sylvester*, 42 Ind. 106; *Axt. v. Jackson School Tp.*, 90 Ind. 101; *Reeve School Tp. v. Dodson*, 98 Ind. 497; *Union School Tp. v. First Nat'l Bank*, 102 Ind. 464; *Platter v. Board, etc.*, *post*, p. 360.

Where the duties delegated to officers elected by public corporations are political or governmental, the relation of principal and agent does not exist, and the maxim *respondeat superior* does not govern. This rule is illustrated in many cases. In the case of *Ogg v. City of Lansing*, 35 Iowa 495 (14 Am.R. 499), it was held that a city was not liable for the negligence of persons placed in charge of a small-pox hospital which the city had established. It was said in the course of the opinion in that case, that "it is impossible to conceive of the endless complications and embarrassments which such a doctrine would involve, and of the extent to which the public interests would thereby suffer. It is safe to assume

³³ 103 Indiana 262-65 (1885).

that if such were recognized as the law, no town would voluntarily assume corporate functions, and that every industrial and commercial interest would become paralyzed."

The recent case of *Bryant v. City of St. Paul*, 21 Central L. Jour. 33, is directly in point. It was there held that a city was not liable for the misfeasance of members of the board of health selected by the city. Many authorities are cited in the note appended to that case, and from them it appears that the doctrine that public corporations, to whose officers governmental powers are delegated, are not responsible for the negligence of their officers in the exercise of these governmental powers. This doctrine has long prevailed in this State. *Brinkmeyer v. City of Evansville*, 29 Ind. 187; *Robinson v. City of Evansville*, 87 Ind. 334 (44 Am.R. 770); *Faulkner v. City of Aurora*, 85 Ind. 130 (44 Am.R. 1); *City of Lafayette v. Timberlake*, 88 Ind. 330.

We have many cases holding that counties, townships and cities are instrumentalities of government, and it must, therefore, be true that where they act simply as the local government they act for the State. As the State is not liable for the acts of its officers, neither can the public corporations be held liable for the acts of its officers in the exercise of political powers. *Robinson v. Schenck*, 102 Ind. 307; *Justice v. City of Logansport*, 101 Ind. 326; *Kistner v. City of Indianapolis*, 100 Ind. 210.

There is no more reason for holding counties liable for the negligence of the commissioners in the exercise of the governmental functions delegated to them, than there is for holding cities liable for the acts of their firemen or police officers, or for holding counties and townships responsible for the torts of sheriffs and constables. In providing for the care of the poor, a police power which resides primarily in the sovereignty is exercised, and neither the sovereign nor the local governing body to whom such a power is delegated is responsible for the misfeasance of its officer.

Judgment affirmed.

The Board of Commissioners of Montgomery County v. Courtney³⁴

The county must pay for the legal services rendered by a lawyer designated by the court in a murder case to defend a poor person.

MITCHELL, J.: On the 8th day of December, 1882, the grand jury of Montgomery county returned an indictment against Joseph Stout, for murder in the first degree.

The venue of the cause was changed from Montgomery to Parke county, where a trial was had, the Hon. James E. Heller presiding as judge *pro tempore*. The prisoner applied for admission to defend *in forma pauperis*, and being so admitted, upon request, John R. Courtney, Esq., was assigned by the presiding judge as his attorney and counsellor. The trial resulted in a conviction, and an appeal was prosecuted to this court, the attorney appointed rendering the services necessary in prosecuting the appeal.

³⁴ 105 Indiana 311 (1885).

On the 23d day of November, 1883, Mr. Courtney filed a claim before the board of commissioners of Montgomery county for his services in preparing the case for appeal, briefing and orally arguing the same in this court, and for expenses while engaged in the service of the prisoner in matters pertaining to the appeal.

The claim recited the appointment, and exhibited a certified copy of the application to the court for such appointment, and the order of the court appointing and assigning the claimant as attorney and counsellor for the accused, together with a bill of particulars of the services and charges.

Upon consideration the board of commissioners refused to allow any part of the claim. The claimant appealed to the Montgomery Circuit Court. The venue of the cause was subsequently changed, and the cause tried by a jury, the Hon. Ared F. White, sitting as special judge, in Parke county. The trial resulted in a verdict and judgment in favor of the claimant for \$550. From this judgment the board of commissioners appealed. Two questions are presented by the argument for consideration here.

It is insisted that the court erred in overruling a demurrer filed in the circuit court to the complaint:

1. Because the court had no jurisdiction of the subject-matter of the action.
2. Because the complaint did not state facts sufficient to constitute a cause of action against the county.

The argument of appellant is predicated on the proposition that the board of commissioners is a court of limited statutory power, and that it has no jurisdiction to make an allowance in respect to any matter for which, within its authority, it could have made no contract. *Miller v. Embree*, 88 Ind. 133, *Moon v. Board, etc.*, 97 Ind. 176, and other cases holding the rule substantially as above stated, are referred to and relied on. Because, therefore, within the ruling in *Hight v. Board, etc.*, 68 Ind. 575, and *Board, etc. v. Ward*, 69 Ind. 441, a board of commissioners has no power to contract with an attorney to prosecute or defend criminals, it is contended the conclusion follows that the board possessed no power or jurisdiction to allow the claimant who was appointed by the court for such service.

Claims against a county arise either out of contract, or from some duty or obligation which the law imposes. Whoever asserts and undertakes to enforce a claim against a county, which pertains to its business, and which must necessarily arise out of contract, must, within the rulings referred to, show a contract made with the board, or some duly authorized agent, and the contract must appear to have been one which it was within the authority of the board to make. *Waymire v. Powell, post*, p. 328. There are, however, many claims of which the board of commissioners are required to take cognizance; which grow out of a duty imposed by law, or from the act of some officer who is authorized by law to create an obligation against the county. Township trustees as such, and as overseers of the poor, may, under certain circumstances, bind the county in reference to matters concerning which the county commissioners are not author-

ized to contract. Accordingly it has been held that a township trustee may bind the county for services rendered in the way of temporary relief to a person in distress, who is without friends and money, as in the case of *The Board, etc. v. Jennings*, 104 Ind. 108. Other illustrations and cases might be cited, but this is sufficient to show the distinction between the cases relied on by counsel and that under consideration.

The question here is, was it within the power of the circuit judge to bind the county to pay for the appellee's services by appointing him to defend a prisoner who was found to be entitled to defence as a poor person, notwithstanding the county commissioners were without power to contract for such services? That it was, we think, can not be doubted. Upon the same principle that the law has committed to the overseers of the poor the duty of determining who shall receive temporary relief when in distress, and to bind the county to persons who care for such persons; so it has committed to the courts the duty of deciding who shall be entitled to defend as poor persons, and to bind the county for services rendered by an attorney in behalf of such persons, in pursuance of an appointment duly made.

Section 260, R.S. 1881, expressly authorizes the court, upon being satisfied that a person has not sufficient means to prosecute or defend an action, to assign him an attorney, and it was held in *Webb v. Baird*, 6 Ind. 13, that the circuit court, even without a statute, had the power, *ex necessitate*, to appoint an attorney to defend a poor person. It was there held, upon the authority of *Gaston v. Board, etc.*, 3 Ind. 497, and *Allegheny County v. Wall*, 3 Pa. St. 462, that the judge who appoints counsel for a poor person was to that extent the agent of the county. The case cited was followed and approved in the following cases: *Board, etc. v. Wood*, 35 Ind. 70; *Gordon v. Board, etc.*, 52 Ind. 322; *Tull v. State, ex rel.*, 99 Ind. 238.

Whether section 260 is applicable to criminal procedure need not be determined. Whether applicable or not, it is nevertheless beyond question that without it the inherent power of the court was ample to justify the appointment.

There could be no propriety or fitness in authorizing or permitting the board of commissioners, an inferior tribunal, to employ counsel either to defend or prosecute actions in the circuit court or other courts of superior jurisdiction, and, therefore, the Legislature has wisely withheld that power from county boards, and committed it in express terms to the courts. It must be supposed that the court in which an action is pending is better able to judge of the necessity for assigning counsel to prosecute or defend than any other tribunal, and that the orderly course of justice would not be obstructed by permitting a trial to proceed without the assignment of counsel when found necessary. Without a statute such courts possess the power, to the end that justice may be administered. *Webb v. Baird, supra*.

Having the authority to assign counsel, it results, necessarily, that courts may impose upon the proper county the obligation to pay for such services. That it was within the legislative intent that such an obligation should arise, was not

left to inference. Section 1415, R.S. 1881, provides, among other things, that the courts may make allowances "to persons performing any services under the order of the court," and section 1414 makes it the duty of the auditor to draw his warrant upon the treasurer for any sum allowed or certified to be due by any court having jurisdiction beyond that of justices of the peace. It thus appears that the compensation for such services is a charge against, and is payable out of, the county treasury. In the orderly course, it should be audited and allowed by the court, but the services having been performed upon the order of the court, the obligation of the county to pay exists nevertheless, and the failure of the court to make the allowance does not discharge the county from its obligation.

It was held in the case of *Board, etc. v. Summerfield*, 36 Ind. 543, that allowances thus made by the court were not conclusive upon the rights of the persons affected thereby; they are only *prima facie* correct. Since the amount fixed by the court is not, and could not be, conclusive as an adjudication, the failure to allow anything does not deprive the claimant of his rights.

That the case in which the services were rendered was tried in Parke county, and that the appointment of the appellee was made in that county, does not make it different.

The case having originated in Montgomery county, and having been taken thence by change of venue to Parke county, the expenses of the trial, as specified in section 1778, R.S. 1881, and such as come "justly and equitably within its provisions," are to be audited and allowed by the court, and the county from which the change was taken becomes liable for their payment. We think the charge for services for defending the accused comes "justly and equitably" within the provisions of section 1778.

As before suggested, the failure of the court to audit and allow the claim cannot deprive the person rendering services, under a specific appointment by the court, of the right to compensation, nor discharge the obligation of the county to pay. When audited and allowed by the court, and duly certified, no discretion remains with the auditor to whom the account is certified. *Gill v. State, ex rel.*, 72 Ind. 266. If the claim had been audited by the court, possibly the only way to have secured a correction of the amount would have been by an application to the court. But as to this we need not decide.

We can not suppose that the Legislature intended that a necessary, and in many cases indispensable, part of the expense of a criminal trial coming from one county to another, should be borne by the county to which the change was taken. It therefore provided in section 1779 that "all costs and charges specified in the last preceding section, or coming justly and equitably within its provisions," etc., should be audited and allowed by the court. It may be a question whether sections 1778 and 1779 should not be construed in connection with the act of March 10th, 1873, Act 1873, p. 221. The appointment by the court in Parke county had, therefore, the same binding force upon the commissioners of Montgomery county as if the appointment had been made and the case tried in the latter county. *Gordon v. State, supra*.

That the services for which compensation was asked were performed in preparing and prosecuting an appeal to this court does not make the obligation of the county different. It was the attorney's duty, if in his judgment the interests of his client demanded it, to prosecute the appeal. His appointment to defend the accused constituted him his attorney until the case was ended, or the appointment revoked by the court which made it. *Stout v. State*, 90 Ind. 1.

The conclusion is thus reached that the objections taken to the complaint on demurrer were not well made, and the ruling of the court in that respect was not erroneous.

The fourth and only other assignment of error, which is not disposed of by what has been said, relates to the regularity of the appointment of the special judge who presided at the trial.

No objection to the presiding judge appears to have been made until after the trial had proceeded so far that the jury rendered a verdict in favor of the appellee. A docket entry copied into the record recites that the appellant then made objection to the entering of judgment on the verdict, because of the want of authority of the presiding judge. The record shows that a change of venue was taken from Judge Britton at the September term, 1884, and that the Hon. Ared F. White was appointed to try the cause, and that he was duly qualified and proceeded at the April term, 1885, with the trial.

As there is no bill of exceptions in the record, in which the facts appear, and as the trial proceeded to the point indicated with the consent of the appellant, we are bound to presume in favor of the regularity of the proceedings. The original appointment having been regularly made by Judge Britton, we must presume, until the contrary appears, that his appointee was properly continued, notwithstanding the incumbency of another regular judge of the court intervened by the creation of a new circuit. The successor to Judge Britton may have been disqualified to sit in the case. *Watts v. State*, 33 Ind. 237.

The judgment is affirmed, with costs.

The Board of Commissioners of Posey County v. Harlem et al.³⁵

The question is one of the liability of the county for goods ordered by a township trustee who conveys poor persons to their places of residence, and supplies temporary relief, in view of the fact that there was an almshouse. It was held that under these circumstances, the township trustee could authorize the expenditures and the county was liable.

Howe, C. J.: The record of this cause shows that prior to the 24th day of March, 1884, appellees, Michael and Jacob Harlem, partners, under the firm name of M. Harlem & Son, presented to the appellant, for allowance, an itemized account for supplies furnished by them, on the orders of the trustee of Black township, in Posey county, to the poor of such township and county. The claim

³⁵ 108 Indiana 164 (1886).

was disallowed by appellant, and the claimants, M. Harlem & Son, appealed to the circuit court of the county. There the cause was tried by the court, and a finding was made for appellees in the sum of \$500.50, and, over appellant's motion for a new trial, judgment was rendered accordingly.

Errors are assigned here by appellant, which call in question the overruling (1) of its motion for a new trial and (2) of its motion to dismiss appellee's cause of action.

In the natural order, and, indeed, in the order in which appellant's counsel have presented and discussed these alleged errors, the error of the court in overruling its motion to dismiss appellees' cause of action herein must first be considered. This motion appears to have been in writing, and therein appellant moved the court to "dismiss this cause, as the evidence shows that the court has no jurisdiction over the subject-matter in controversy." In this same written motion, appellant also moved the court "to strike out from the evidence all the orders, offered in evidence, signed by Geo. D. Rowe, trustee." The rulings of the trial court on each of these motions have been elaborately discussed by appellant's counsel in their brief of this cause. Neither the motions nor the rulings of the court thereon have been made parts of the record of this cause, either by a bill of exceptions or by an order of court. The questions discussed by appellant's counsel, therefore, are not presented here for our consideration or decision by the second alleged error. Section 650, R.S. 1881; *Fryberger v. Perkins*, 66 Ind. 19; *Williams v. Potter*, 72 Ind. 354; *Shields v. McMahan*, 101 Ind. 591; *Kleespies v. State*, 106 Ind. 383.

We recognize the rule, however, that "the objection to the jurisdiction of the court over the subject of the action" is not waived by any failure to object or except, or to file a bill of exceptions on that ground. Section 343, R.S. 1881. But the "subject-matter in controversy," in the case in hand, was a claim against the county of Posey for necessary supplies furnished by appellees to the poor of such county, on the orders of the trustee of Black township therein. It will not do to say, we think, that the court below had "no jurisdiction over the subject-matter in controversy" herein. By the express provisions of sections 5758, 5759 and 5760, R.S. 1881, in force since May 31st, 1879, the board of commissioners of Posey county had exclusive original jurisdiction of appellees' claim against such county. This is settled not alone by the plain letter of the statute, but, also, by our decisions. *Pfaff v. State, ex rel.*, 94 Ind. 529; *State, ex rel. v. Board, etc.*, 101 Ind. 69; *State, ex rel. v. Morris*, 103 Ind. 161.

In section 5760, R.S. 1881, also in force since May 31st, 1879, being section 3 of the same statute which gives the board of commissioners of each county in this State exclusive original jurisdiction of any claim against such county, it is provided as follows: "Any person or corporation, feeling aggrieved by any decision of the board of county commissioners, made as hereinbefore provided, may appeal to the circuit court of such county, as now provided by law."

In the case now before us, appellees' claim against Posey county was duly pre-

sented to the appellant for allowance; the claim was disallowed and rejected by appellant, and the appellees, feeling aggrieved by such decision, appealed therefrom to the circuit court of Posey county. Upon these facts shown by the record, there is no room for even a doubt, as it seems to us, of the full and complete jurisdiction of the court below over this suit and the subject-matter thereof.

On the trial of this cause, the court found the facts to be substantially as follows:

1. All the goods and money, mentioned in Plaintiff's bill of particulars, were furnished by them, upon the orders of George D. Rowe, trustee of Black township, in Posey county, and the goods were of the value charged therefor.

2. George D. Rowe was, at the time of drawing such orders, the duly elected and qualified trustee of Black township, and acting as such.

3. All the orders, numbered from 1 to 33 inclusive, were for money to be used for the purpose of defraying the expenses and transportation of certain persons to their homes in other counties of this State, or in other States.

4. In each of these cases, the trustee, as overseer of the poor, had made reasonable inquiry and found, and in good faith believed, such persons to be in need, and either sick or in distress, and furnished sums for transportation as being, in his judgment, the best mode of affording to them temporary relief.

5. Fraud never being presumed, the court found that the evidence did not show that any of the orders, either for goods, money or transportation, were issued either corruptly or fraudulently by said township trustee.

6. Upon and after examination and inquiry by said township trustee, all of the remaining orders were issued for goods, either to transient paupers or resident poor persons, who at the time were unable to provide for themselves and were found by said trustee to be in need of temporary relief.

7. Owing to the distance of the county asylum for the poor from Black township, and especially from Mt. Vernon where most of these persons were found, and the cost between \$3 and \$4 of conveying any one of such poor persons to the county asylum, the court found that it would have been inexpedient to have sent such persons to said asylum, or that there was no abuse of the discretion given to the township trustee, as overseer of the poor, in granting the persons mentioned, at their places of residence, the temporary relief afforded by him through his orders of the plaintiffs.

Upon the foregoing facts, the court concluded as matter of law that the appellant was justly and legally liable to appellees for the full amount of their claim herein. In this conclusion, we think there was no error.

The facts found by the court were fully and fairly sustained by the evidence, appearing in the record. In section 6066, R.S. 1881, in force since May 6th, 1853, the township trustees of the several civil townships of this State are designated as "overseers of the poor," within their respective townships, and are required to perform all the duties with reference to the poor therein, that may be prescribed by law. In section 6071, also in force since May 6th, 1853, it is pro-

vided that "The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner required by law." So, also, in section 6078, of the same statute, it is further provided that "Whenever any person, entitled to temporary relief as a pauper shall be in any township in which he has not a legal settlement, the overseer of the poor thereof may, if the same be deemed advisable, grant such relief, by placing him or her temporarily in the poor-house of such county," etc. In section 6089, of the same act, it is made the duty of the overseer of the poor, on complaint to him that any person, not an inhabitant of his township, is lying sick therein or in distress, and without friends or money, so that he or she is likely to suffer, to examine into the case and grant such temporary relief as the nature of the same may require.

In construing the various provisions of our law for the relief of the poor, two things are plainly observable, namely: 1st. The legislative intention that the poor of each county and the transient poor shall, in any event, receive all necessary relief at the expense of the proper county; and 2nd. The nature and extent of such relief, in each particular case, is largely entrusted to the sound discretion and practical judgment of the township trustee, as overseer of the poor. Orders were issued by the township trustee to the appellees, in the case under consideration, directing them to furnish the persons named therein the money or supplies which the township trustee had deemed it advisable to give such persons to relieve their necessities. Complaint is made by appellant's counsel, that the trial court erred in admitting these orders in evidence. Of course, the orders were not binding or conclusive upon either the township trustee or the county. But proof having been made *aliunde*, that the money or supplies, mentioned in the orders, had been furnished by appellees to the persons named therein, and that such persons were proper recipients of, and lawfully entitled to, the relief furnished by appellees upon such orders of the township trustee, we think that the orders were admissible in evidence as parts of the transaction. *Bloomington School Tp. v. National, etc., Co.*, 107 Ind. 43, and cases cited.

In *Commissioners, etc. v. Holman*, 34 Ind. 256, it is said: "The question as to the necessities of the persons relieved is a matter for the determination of the trustee, and we think if the people call competent and faithful persons to the discharge of the duties of this office, there will be little cause of complaint under this rule. Should there be connivance or fraud between the trustee and the claimant, this, of course, would present a different question." To the same effect, substantially, are the following cases: *Connor v. Board, etc.*, 57 Ind. 15; *Board, etc. v. Seaton*, 90 Ind. 158; *Board, etc. v. Jennings*, 104 Ind. 108.

Whether it will be better, in any case, to remove a resident poor person to the county asylum for the poor, as a permanent charge, or to afford him temporary relief merely, is also a question, we think, for the determination of the proper township trustee; and in the decision of this question he should take into con-

sideration the best interests of the public, as well as those of such poor person. In the case at bar, the court expressly found that the dealings between the township trustee and the appellees were in good faith, and free from either fraud or corruption. Upon the whole case, as presented by the record, we are of opinion that the court committed no error herein, which will authorize or justify the reversal of the judgment.

The judgment is affirmed, with costs.

The Board of Commissioners of Posey County v. Templeton³⁶

A township trustee can be paid only once for his services although he is also overseer of the poor.

ELLIOTT, J.: The appellee filed a claim for \$600 for services rendered as overseer of the poor from the 19th day of April, 1884, until the 15th day of April, 1886.

The appellant answered that the appellee was the duly elected and qualified township trustee, that all of the alleged services were rendered by him in his official capacity of trustee, and that before the commencement of this action he was allowed and paid out of the township fund two dollars per day for each and every day for which in his complaint and itemized statement he claims compensation. This answer is good, and the trial court erred in sustaining the appellee's demurrer.

The question here presented is settled by the decision in *Board, etc. v. Bromley*, 108 Ind. 158, where it was said: "We further interpret the section under consideration to mean that, as applicable to both classes of service, an allowance of only two dollars can be made for an actual day's service, without reference to the manner in which the day may have been divided between the two classes of service, and that, consequently, a township trustee is not entitled to receive, out of any fund, more than two dollars for official services performed during any one day."

This ruling is in harmony with the spirit of our statutes and our decisions, for their spirit is that compensation for official services can be recovered only in cases where it is clearly given by positive law.

Judgment reversed.

Morgan County v. Seaton³⁷

The county commissioners need not pay for medical services to the poor of a township when other provision has been made and when the township trustee who is the judge as to the adequacy of such provision as has been made refuses aid.

MITCHELL, C. J.: This is an appeal from a judgment in favor of Dr. Grafton W. Seaton against Morgan county. The judgment is predicated upon a claim

³⁶ 116 Indiana 369 (1888).

³⁷ 122 Indiana 521 (1889).

for professional services rendered in the treatment of a poor person, residing in Gregg township, in the above county.

It appears from the complaint that a poor person, in the township above named, became seriously ill, and was in urgent need of medicines and medical treatment, which she had no means to procure. The county commissioners had employed a competent physician to attend upon the poor of the township, but it is averred that the physician so employed, when called upon to treat the poor person in question, refused to give her the necessary medicine and attention, or any attention at all, notwithstanding he knew that she was a poor person, dependent upon the township for treatment. Thereupon, the averment in the complaint is, the "plaintiff out of humanity and proper regard for her in her sick and dying condition, called upon the township trustee for said township to interfere in her behalf, and rendered his services to said trustee for her benefit, and offered to treat her under his employment for her benefit." It is averred that although the township trustee was fully aware of the sick and necessitous condition of the poor person, and that she needed immediate attention and care, he refused to extend any aid, and declined to employ the plaintiff, placing his refusal upon the ground that he had no right to employ any one, because of the previous employment by the board of commissioners of another physician, whose duty it was to attend the poor. The plaintiff thereupon, in order to save the life of the poor person and prevent her from suffering, rendered her medical attention for a period of about three months, for which he demanded and recovered a judgment for one hundred and twenty dollars against the county.

The question is, whether or not, upon the facts stated, the county became liable to pay for the services of the plaintiff, rendered in the manner and under the circumstances detailed.

The argument in support of the judgment is predicated on section 6060, R.S. 1881, in which it is provided that, "Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof."

While it is true that it is made the duty of every county in the State to relieve and support the poor and indigent, the method by which support and relief are to be administered is distinctly pointed out by law. In the first place, the township trustees of the several townships are made overseers of the poor within their respective townships. Section 6066, R.S. 1881. The overseer of the poor in each township is specially charged with the oversight and care of all poor persons in his township, and is required to see that they are relieved and taken care of in the manner provided by law. Section 6071. He is required to enter in the poor-book of his township all poor persons who are unable to take care of themselves, and who in his judgment will be entitled to relief, and in case he refuses to enter any person on the poor-book who may be supposed, or who supposes himself, to be entitled to relief, the board of commissioners may, upon application, direct the overseer to receive such person on the poor list. It will thus be seen that the law imposes the duty of determining who are poor persons, entitled to relief,

primarily upon the township trustee, acting as overseer of the poor, and provides a particular method by which his judgment may be reversed by application to the county board in case he refuses to recognize a person as poor, who ought to be entered on his list. It is made the duty of the overseer on complaint made to him that any one not an inhabitant of the township, is sick and in distress, to examine into the case and grant such temporary relief as the nature of the case may require. *Board, etc. v. Jennings*, 104 Ind. 108. Other sections of the law might be referred to, but it is enough to say that an examination of the statute discloses that the benefactions of the State are to be dispensed in pursuance of a carefully devised plan, which is to be executed by officers designated by the law, and not according to the individual notions of any citizen as to what humanity may require. To the overseer of the poor the law confides the duty of deciding who are poor persons entitled to relief, and his decision can be reversed only in the manner pointed out. According to the provisions of section 5764, R.S. 1881, it is specially made the duty of the board of commissioners "to contract with one or more skillful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum, and may also contract with physicians to attend upon the poor generally in the county; and no claim of a physician or surgeon, for such services, shall be allowed by such board except in pursuance of the terms of such contract; *Provided*, That this section shall not be so construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require." As will be seen, this section in terms prohibits the board of commissioners from allowing any claim of a physician for services, except in pursuance of a contract of employment, therein authorized to be made, and it has been uniformly held that the overseer of the poor has power to employ a physician only in the event the board of commissioners fail to make suitable provision for attendance upon the poor by contract. *Board, etc. v. Boynton*, 30 Ind. 359; *Board, etc. v. How*, 87 Ind. 356. In case the physician employed is not accessible, and an emergency is deemed to exist, or if he refuses for any reason to act, the overseer of the poor may employ a physician, in case of urgent necessity, to treat one in need of medical aid, and in the absence of fraud, the county will be bound by his judgment and liable for the physician's services, even though a physician had been employed by the county. *Board, etc. v. Seaton*, 90 Ind. 158; *Washburn v. Board, etc.*, 104 Ind. 321.

It has been held, and with eminent propriety, that where the overseer of the poor, in the exercise of his discretion, decided that an individual was a poor person, and entitled to relief under the poor laws of the State, and in pursuance of such decision, employed a physician to render medical aid, his judgment was conclusive on the county unless connivance or fraud could be shown. *Commissioners, etc. v. Holman*, 34 Ind. 256; *Board, etc. v. How, supra*.

If the county is concluded by the decision of the overseer when he determines that an individual is entitled to relief and employs a physician, it follows, as a

necessary corollary, that the physician must also be concluded from recovering from the county, when the overseer refuses or decides not to employ him.

Now, while the complaint abounds in statements that the person to whom medical aid was furnished was a "pauper" and a "poor person," it is nowhere averred that she had been admitted to the list of poor persons, or that the overseer had in any way determined that she was entitled to receive temporary relief. It does, however, distinctly appear that he refused to employ the plaintiff to administer relief. Accepting the statements in the complaint as true, and conceding that the person relieved was a poor person, within the meaning of the law, it may be that the overseer made a mistake in refusing to employ a physician, but that concession still leaves the plaintiff without any right of action against the county, which is maintainable only upon the ground of an express or implied contract of employment, by one having competent authority to that end. It can not be that over and above all the various provisions which point out the method for ascertaining and relieving the poor, and supplying them with medical and surgical aid, counties still remain liable to any one who can show that the overseer made a mistake in refusing to employ him, and who proceeded notwithstanding the refusal, from motives of humanity, to relieve a poor person in distress.

It can not be that it was intended that courts and juries should hold the overseer under surveillance, and determine, at last, who are poor persons, entitled to relief, and whether or not the officers to whom the care, oversight and relief of the unfortunate are committed have decided wisely in each or any particular case. To affirm that it was, is to declare that the statutory system for the relief and care of the poor is no system at all.

The Legislature, upon whom the duty of making provision for the poor and unfortunate is imposed, has adopted what seemed to it adequate means for the discharge of that duty through agencies specially designated for that purpose. Beyond the enforcement of obligations arising, and rights accruing through the agencies appointed, the courts have no supervising control over the subject.

The complaint did not state facts sufficient to constitute a cause of action.

The judgment is therefore reversed, with costs.

OLDS, J., dissents.

The Board of Commissioners of Montgomery County

v.

Ristine, Administrator³⁸

The county authorities could have acted under a statute enabling them to give custodial care to a dangerous insane person and collect the cost of his care from his estate. This is, however, not possible under the poor relief acts. Two judges dissented, quoting opinions from other states.

MITCHELL, J.: In the year 1873 John W. Hulett was adjudged a person of unsound mind, incapable of managing his estate, and was accordingly placed

³⁸ 124 Indiana 242 (1890).

under guardianship by order of the circuit court of Montgomery county. At the September term, 1874, the guardian appeared before the board of commissioners of the county and represented that his ward was possessed of an estate amply sufficient to pay for his board and care, and that as guardian he was willing to enter into an agreement with the county board to pay three dollars a week for the board and care of his ward. It was thereupon agreed between the board and the guardian, that the insane ward should be received into the county asylum for the poor, to be boarded and cared for under the supervision of the superintendent of the asylum at the price of three dollars per week, and an order was made upon the commissioners' record accordingly. The ward died in 1887, leaving an estate valued at \$3,000. The board of commissioners thereupon filed a claim against his estate, in which they set out the foregoing order and agreement, and alleged that the board had fully complied with its agreement, and that there remained due the county something over four hundred dollars on account of board and care furnished the decedent. By way of inducement it is alleged that the insane ward was wholly incapable of taking care of himself, that he was dangerous and indecent in his habits, that the guardian had no suitable or safe place in which to confine him, that he had been unable, after repeated efforts, to procure anyone to take charge of and care for him, and that he thereupon made application to the board of commissioners, as above, to have him admitted into the county asylum, where a suitable place had been prepared to keep and take care of such persons as he was.

The question is whether or not the board of commissioners was entitled to recover for what remained unpaid at the death of the ward, either upon the contract specially pleaded, or for the value of the board and necessities furnished as upon an implied promise to pay.

The facts as presented make it apparent that the person against whose estate this claim is being prosecuted was insane and dangerous to the community, within the meaning of the statute.

One whose insanity is of such a character as to lead him to make indecent exposure of his person in public, and who, on that account, becomes a constant menace to public morality and decency, is as certainly dangerous to the community, if suffered to remain at large, as is one who threatens physical injury to others. The statute (sections 5142 to 5150, R.S. 1881) makes provision whereby such persons may be restrained under the order of the circuit court at the public expense. Provision is also made whereby the public treasury may be reimbursed out of the estate of a person dangerously insane, in case he be possessed of an estate.

This statute looks to the protection of the public from those whose insanity makes them dangerous to the community. It has in it no feature of charity to the individual, nor was it enacted with a view to benevolence. If proceedings had been taken under this statute, and the person adjudged insane and dangerous to the community had become a charge upon the public treasury, it would have been within the power of the county commissioners, by the very terms of

the statute, to collect the charges out of the estate of the insane person. Section 5147, R.S. 1881. No regard was paid to the above statute. The constitution provides for the establishment and support of certain benevolent institutions, and confers power upon county boards "to provide farms as an asylum for those persons who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society." Section 3, article 9, Constitution.

The Legislature, in devising a charitable scheme for the care and support of the poor, enacted that "Every county should relieve and support all poor and indigent persons lawfully settled therein," and that it should be lawful for county commissioners to purchase a tract of land, and to build, establish, and organize an asylum for the poor, and employ some humane and responsible person to take charge of them. Sections 6069, 6090, R.S. 1881. The statute provides that all poor persons who have become permanent charges on the county may be received into and supported in the county asylum, and the county commissioners are authorized to assess a tax for the support of the poor and for the establishment and maintenance of an asylum; but we find no authority for a county board to admit any one into the county asylum by contract, or to receive pay for the care and support of any one admitted into the institution. The organization and maintenance of county asylums for the poor, and the care and support of those who are admitted into them, is a part of a scheme of unmixed public charity and benevolence which was inaugurated under the express sanction of the Constitution.

An institution organized for the avowed purpose of bestowing or administering charity, unless specially authorized by its charter to do so, can not contract to bestow what purports to be a benefaction for a price, or to dispense charity for pay. The statute nowhere authorizes county commissioners to enter into contracts for the care and support of persons in the asylums organized for the care and support of the poor; nor is there any implication that persons who are admitted into those asylums can be so admitted by contract with the county commissioners.

In *Board, etc. v. Hildebrand*, 1 Ind. 555, it was held that the provision made by law for the support of the poor was purely charitable, and that a husband could not be held liable for board, lodging and support furnished in the county asylum to his wife. Again, in *Board, etc. v. Schmoke*, 51 Ind. 416, it was held that a contract made by the husband of an insane wife with a board of commissioners for her support in the county asylum was invalid, and that no recovery could be had by the county, even though it had performed the contract. The case first cited was decided in 1849, before the adopting of the present Constitution. The doctrine distinctly enunciated in that case was that county commissioners had no power to convert an institution that was intended as a public charity into a boarding-house for such as wished accommodation for themselves or for their relatives for pay. A convention to revise our Constitution, and more than twenty successive Legislatures, have met and adjourned since that decision was promulgated, and all have accepted it as a correct exposition of the spirit and pur-

pose of the Constitution and laws under which provision has been made for the relief of the poor. All the existing laws in relation to those asylums have either been enacted or re-enacted since the decisions above mentioned were promulgated, and yet there is nowhere, even by implication, any power conferred upon county boards to admit persons of any degree or station into a county asylum for pay or by contract. More than forty years ago this court declared, in effect, that these institutions were organized for purely charitable and benevolent purposes, that the work done in them was to be the part of the public in the great labor of love for the unfortunate, that was to be done without money and without price, and the Legislature, the immediate representative of the people, during all this time has accepted the decisions of this court as correct interpretations of the spirit and purpose of the Constitution and laws.

After this great lapse of time we are asked to overturn these decisions thus acquiesced in, so as to authorize an institution, that has all this time been regarded as a noble public charity, to be converted, in part, at least, into a house of private entertainment, by contract with the county commissioners. If county commissioners may make a contract with the guardian of an insane ward, or the husband of an insane wife, to care for and board the ward or wife, they may enter into contracts with guardians of minor children to have them boarded at the asylum for the poor at an agreed price, or they may enter into contracts with husbands whose wives are not insane for a like purpose. When it is thought advisable to change the policy of the state, so as to authorize county asylums to be converted into places for confining and keeping insane persons by contract, or for boarding those who are not agreeable to other members of the family, the change ought to be made by the Legislature, and not by the courts.

Our conclusion is that the contract relied on was unauthorized, and beyond the power of the county commissioners, and that no recovery can be had thereon. Nor can there be any recovery upon the *quantum meruit*, as upon an implied contract or promise.

It is a thoroughly settled proposition that where one is received into a charitable institution for support or treatment, the law raises no implied obligation to pay in the absence of a contract. Where an individual is received into an institution established solely for benevolent purposes, the law refers his reception, and the relief administered to him, to motives of charity, unless the charter or by-laws of the society or institution provide that compensation may and shall be charged. An institution or society, no more than an individual, can assume to be dispensing charity and at the same time create a pecuniary obligation against one to whose necessities it ministers. The wayfaring man who fell among thieves may have been rich as Dives, but he came under no implied obligation to reimburse the Good Samaritan, who set an example of charity by pouring oil and wine into his wounds and by lodging him at an inn at his own expense. Services which were intended to be gratuitous at the time they were rendered can not afterwards be used as the basis of an implied promise to pay. *Ramsey v. Ramsey*, 121 Ind. 215 (222).

In *St. Joseph's Orphan Society v. Wolpert*, 80 Ky. 86, it appeared that a charitable institution, organized for the purpose of educating and maintaining orphan children, sought to recover from a guardian the value of raising and maintaining his wards, the children of a deceased soldier. The wards had been received by the society with the avowed purpose of bestowing upon them an education as a matter of charity. Learning afterwards that the guardian had in his hands a considerable sum of money which had been paid him by the United States government as pension money, the society brought suit. It was held that the society having been created for charitable and benevolent purposes, it could not recover for board, care and education of orphans, whose control it had taken with the avowed purpose of bestowing charity.

County asylums, having, as we have seen, been organized for purposes of charity and benevolence only, the commissioners having no power to admit persons by contract for pay, the law will not raise an implied obligation or promise on the part of one admitted to pay for the value of his board and support. The law will imply that he was admitted through motives of charity. We are aware that there are decisions in some of the States that seem to hold a contrary view. Courts in other States, however, hold to the views enunciated by this court in the cases cited. Our opinion is that the subject is not now open to the courts of this State for further examination, until the Legislature shall have intervened. Whether an overseer of the poor, who has furnished temporary relief to a wife or child, wrongfully deserted by a husband or parent, can recover from the person in default upon an implied or constructive promise, we do not inquire. What we hold is that a person who is admitted into a county asylum, organized for the support of the poor, can not be charged therefor either upon an express or implied contract.

The judgment is affirmed, with costs.

DISSENTING OPINION

BERKSHIRE, C. J., and OLDS, J.: We are compelled to dissent from the opinion of the court, and briefly state some of the reasons which lead us to a different conclusion.

Conceding that under the law the contract alleged in the appellant's complaint was one which it had no legal right to make, it does not follow that the appellant might not enforce it or recover upon a *quantum meruit*.

The guardian of the decedent might, under the circumstances, enter into such a contract, and after his ward was taken into the county asylum and cared for pursuant to the contract, it did not lie in his mouth during the lifetime of the decedent, nor of his administrator thereafter, to deny the authority of the appellant to enter into the contract.

It appears that the parties all acted in good faith, and in the light of the circumstances, that which was done was for the best, not only for the decedent but for the public.

The decedent was an insane person, and his condition was such that the pub-

lic good, as well as his own benefit, required that he be confined. He had an ample estate to compensate those who might care for him, but no private person could be found prepared and willing to assume the burden and responsibility.

The appellant was so situated that it could take the decedent to its poor asylum and give him proper care and attention without in any way abridging the rights or privileges of others supported at said institution. Under such circumstances we can imagine no satisfactory reason why the appellant should not be reimbursed. Every element of an estoppel is present. The opinion of the court in the main rests upon two former cases decided by this court. *Board, etc. v. Hildebrand*, 1 Ind. 555; *Board, etc. v. Schmoke*, 51 Ind. 416.

The last of these cases was decided by a divided court, two out of five of the judges dissenting.

Not only are we of the opinion that these cases are not sound in principle, but we find them to be out of line with the great weight of authority. See *Howard v. Trustees, etc.*, 10 Ohio, 365; *Trustees, etc. v. Demott*, 13 Ohio, 104; *Inhabitants, etc. v. Turner*, 14 Mass. 227; *Jasper County v. Osborn*, 59 Iowa, 208; *Inhabitants, etc. v. Stratton*, 128 Mass. 137; *City of Bangor v. Inhabitants, etc.* 71 Maine, 535; *Town of Dakota v. Town of Winneconne*, 55 Wis. 522; *Directors, etc. v. Manlany*, 64 Pa. St. 144; *Turner v. Hadden*, 62 Barb. 480; *Wertz v. Blair County*, 66 Pa. St. 18; 2 Kent, 148; *Commissioners, etc. v. Directors, etc.*, 7 Ohio St. 65; *Goodale v. Lawrence*, 88 N.Y. 513; *Inhabitants, etc. v. Lyons*, 131 Mass. 328.

In our opinion the judgment ought to be reversed.

The Board of Commissioners of Tipton County v. Brown³⁹

Normally the brother was not liable, and he could collect pay for caring for his brother. In this case the poor person was injured, could not be taken to the almshouse, arrangement was made with the overseer for compensation, and the county was held liable.

From the Clinton Circuit Court.

REINHARD, J.: This was an action by the appellee against the appellant for services performed in nursing and caring for Charles Brown, appellee's brother, an alleged pauper resident of Tipton county, in his illness. The venue of the cause was changed to the court below. There was a trial by jury, resulting in a verdict and judgment for the appellee for \$350.

Among other causes relied upon for a reversal of the judgment is the alleged insufficiency of the evidence to sustain the verdict. This cause was properly assigned in the appellant's motion for a new trial, the overruling of which constitutes one of the specifications of error.

We think the evidence fairly tends to show that Charles Brown was a poor person and a resident of the township, the trustee of which, it is claimed, made the arrangement with the appellee upon which this action is based; that he was found lying by the side of a railroad track in a badly crippled condition, having

³⁹ 4 Indiana Appellate 288 (1891).

been struck by a railroad train and severely injured; that by the direction of the railroad company's physician, upon whose road he was injured, he was taken to the appellee's house; that appellee is the brother of said Charles Brown, and has a family, and owns the farm upon which he resided; that he took said Charles Brown into his family without objection and without any contract or understanding of any kind with the township trustee or other person; that he cared for said Charles in his family, and they nursed him and gave him such attention as he needed in his badly crippled condition; that said services were worth from \$6 to \$10 per day; that about a week after Charles had come to his house the appellee and his wife called upon the township trustee to ascertain what arrangements said trustee would make about pay for appellee's services in caring for his said brother. The trustee testified that he informed appellee he could not pay over \$2.50 per week for such services, which appellee said he was not willing to take; that he, the trustee, invited the appellee to go to the county-seat with him to see the county commissioners in relation thereto; that, in pursuance of such invitation, they went to the commissioners, who were then in session, but the evidence does not show what was the result of the interview. The appellee and his wife testify that the trustee asked them if Charles could be moved; that they told him he could not be; that the trustee then told them to continue to care for Charles the best they could, and the county would pay appellee for it.

It thus appears that there was evidence from which the jury had a right to conclude that there was an arrangement between the appellee and the trustee by which the latter directed the former to care and provide for Charles Brown at the expense of the county. It is the duty of the township trustee, who is the overseer of the poor, to have the oversight and care of all poor persons in his township who are a permanent charge. Section 6071, R.S. 1881. It is also the duty of such trustee to grant temporary relief to poor persons who have no permanent settlement, or when the same cannot be ascertained, or to the transient poor. Sections 6077 and 6078, R.S. 1881. The nature and extent of such relief are necessarily left to a large extent within the sound discretion of the trustee. *Board, etc. v. Harlem*, 108 Ind. 164. The fact that the poor person is already being cared for when the trustee is informed of the case furnishes no reason for a failure on the part of the trustee to make arrangements for future relief if he regards such as necessary. *Board, etc. v. Jennings*, 104 Ind. 108.

The mere fact that Charles Brown was found in Madison county when first seen in the disabled condition in which he was discovered is no reason why, after he had been transported into Tipton county in good faith, he should not be given assistance as a transient pauper. Besides, there was sufficient evidence from which the jury could well find that he had a permanent settlement in Tipton county and was without the necessary means to care for himself, and that it therefore devolved upon Tipton and not Madison county to furnish him relief.

It is argued that the cause ought to be reversed because it was shown that the appellee was the brother of the indigent person whom he relieved and was financially able to care for him. We cannot say, as a rule of law, that it is the duty

of every man whose means admit of it to give relief to his afflicted brother in time of need and distress. We do think that these ties of kindred and the possession of at least a moderate competency furnish a strong presumption that when the pauper and afflicted brother is voluntarily taken into the family and cared for the services are to be rendered gratuitously, but they are not conclusive evidence of such intention. It should be left to the jury, under all the facts and circumstances of the case, to determine whether the services were to be gratuitous or the county was to be looked to for compensation, and when there is positive proof of a contract with the township trustee that the pauper was to be cared for at the county expense, and the contract was within the powers of such trustee, this would be conclusive evidence to overcome any presumption arising from kinship and the like.

We think the evidence tends to support the verdict.

The court instructed the jury that the fact that the appellee was the brother of the injured party relieved "furnished no reason or cause that he should care for him without compensation, any more than if he had been no relative. He stands upon the same basis as a stranger under the same circumstances." Whether in view of the evidence this instruction presents the law correctly may well be doubted if we are correct in what has just been said with regard to the presumption that might properly exist in such a case where the contract or agreement of the overseer of the poor is in dispute. But as this question, though saved in the record, is not discussed in the brief of appellant's counsel we must treat it as waived.

The appellant's counsel think it was error to permit the appellee and his wife to testify as to services rendered by Mrs. Brown and the value thereof. It is argued that if Mrs. Brown rendered any services, and the county authorized them, the latter would be liable for such services to her individually, and not to her husband, the appellee. In this view of the law we think the appellant's counsel are in error. The common law rule still prevails in Indiana to the extent that the earnings of the wife are the property of the husband, except in case where she carries on a separate business or works for others on her own account. *Citizens Street R. W. Co. v. Twiname*, 121 Ind. 375. Here the services were rendered as a part of the household work in the appellee's family, and they belong to the appellee.

The court overruled a motion for a continuance, and this ruling, it is insisted, was error. The affidavit upon which the application is predicated was made by James M. Fippen, an attorney of record for appellant. In it the affiant says he is a member of the law firm of Gifford and Fippen, of the city of Tipton; that his partner, George H. Gifford, is the regular legal adviser and attorney for the board of commissioners of the county of Tipton, and, as such, has the sole and exclusive charge and control of the legal business of the appellant; that this cause was commenced in Tipton county, but, by change of venue, came into the Clinton Circuit Court after a trial in Howard county; that during all the progress of said cause said Gifford was the sole attorney and had the exclusive con-

trol and management of this cause; that he is the only attorney at present familiar with the appellant's defence, and the trial cannot, in justice to said appellant, proceed in the absence of said Gifford; that affiant, while marked as an attorney of record in said cause and although he is partner of said Gifford in the general practice, has no connection whatever or relation with said cause, and knows nothing of the merits of the same and of the defence to the action; that he has been dependent entirely and solely upon the said Gifford to prepare and make a defence in said cause; that affiant has no employment whatever by the appellant, and is under no obligation or responsibility for the management of the same, and has never given it any attention nor appeared in court therein; that he is reliably informed and believes that a few days before the setting of this cause for trial one Marcellus Bristow, an attorney of record in this cause, had in this court, while at the city of Tipton, Indiana, notified and informed said Gifford that this cause had not yet been set for trial, but that upon his return to Frankfort he would have the same set for trial, and would notify and inform Gifford of the date of the trial, in time for the latter to prepare the defence and have his witnesses summoned in time to be at the trial; *"but the said Brown failed and neglected to notify said Gifford of the date fixed by the court for the trial of this cause"*; that Gifford had no information or knowledge of the action of the court in setting said cause for trial until this morning at nine o'clock, when he was informed by telegraph, and also by telephone message from Samuel O. Bayless, a member of this bar, that the cause had been set for trial for this day, when he immediately requested said Bayless to notify the court of the arrangement and agreement between him and Bristow, attorney for plaintiff, and ask that the cause be postponed or continued a reasonable length of time to enable him to secure the attendance of appellant's witnesses; affiant further says that said Gifford is now sick at his home in Tipton, Tipton county, Indiana, and unable to leave his home and enter upon the trial of the cause, and he files the certificate of said Gifford's family physician in support of the affidavit; that it would at this time be impossible for the appellant to procure other counsel and give such counsel the facts and information necessary to make a suitable and proper defence in this action, there being no other attorney or person sufficiently acquainted with the facts save the said Gifford to make such defence; that the appellant is represented by three commissioners residing in different portions of the county of Tipton, and that it would require at least one or two days' time to convene said commissioners so as to act in the matter of employing other counsel; that he is informed and believes the appellant has a good and meritorious defence to the action; that if the cause is postponed for a reasonable time, or continued until the next term, he believes Gifford will be able to attend and try said cause, but if not, then appellant will procure other counsel; that the affidavit is not made for delay, but in the interest of justice, etc.

It is apparent from this affidavit that two grounds are attempted to be set up therein, either of which is claimed as being sufficient for a continuance or post-

ponement. One of them is the illness of Mr. Gifford, of counsel for appellant, and the other the failure of Bristow, the attorney for the appellee, to notify the said Gifford of the assignment of the cause to a day for trial in time to prepare the defence as he had agreed to do. It is not disclosed by the record when the action of the court was taken setting the cause for trial. The court convened on Monday, the 2d day of March, and the day fixed for the trial was March 21. In the absence of any showing to the contrary, we must assume that the court gave ample time for preparation for trial. For aught that appears, the cause may have been assigned for trial on the second day of the term, the day set apart by statute for the first call of the docket. Section 400, R.S. 1881. The law provides that the circuit judge shall arrange and regulate the order of business in court and provide for the trial of causes in certain order. Section 405, R.S. 1881. This contemplates an early arrangement of the docket, or calendar, and this court must presume that the circuit court performed its duty in every respect until the contrary is made to appear by the record. If then the court fixed a day for the trial in ample time to enable the parties to prepare for trial, it was the duty of counsel to ascertain and keep track of the condition of the cause and upon what day it stood for trial. The court can not be bound by the private arrangements of counsel among themselves as to sending each other notice of the time of trial. If so it would involve the court in interminable investigations in respect to the keeping of good faith with each other by the attorneys in every case, and in cases where it was agreed that notice should be sent, the court would be required furthermore to determine the sufficiency of the notice and how long it must be served before the day of trial, etc. This would seriously interfere with the court's arrangement of its docket, and would greatly retard the speedy disposition of its business. We think, therefore, that the court properly refused to take notice of the agreement alluded to in the affidavit.

Whether the violation of such an agreement might or might not constitute good cause for setting aside a judgment by default for excusable neglect, as argued by counsel for appellant, is not now the question. We do not think it is sufficient ground for a continuance under the facts and circumstances set out in the affidavit in this case. The granting or refusing of applications for continuance are largely within the discretion of the trial court, and unless there is an abuse of such discretion the denial of the application will not constitute a good cause for a reversal of the judgment.

Nor do we think the sickness of counsel was a sufficient ground for continuance. It is not stated in the affidavit how long Mr. Gifford had been sick, and, for aught we know, sufficient time may have elapsed for employing additional counsel or for giving Mr. Fippen, the partner of the absent attorney, ample instructions as to the defence and advising him in the premises. We do not think it is shown that the absence of the attorney, Gifford, prejudiced the appellant's case. *Whitehall v. Lane*, 61 Ind. 93; *Belck v. Belck*, 97 Ind. 73; *Moulder v. Kempf*, 115 Ind. 459.

We have examined all the errors discussed and find none for which we feel authorized to reverse the judgment. While we have serious doubts as to the propriety of holding a county liable for services rendered under the circumstances disclosed in this case, we must adhere to the well-established rule that an appellate court in this State will reverse a cause only for some specified legal reason, properly presented by the record and discussed in the brief of appellant's counsel. It was the duty of the court below to grant a new trial unless it was clearly satisfied that the result reached was just and proper, and having failed to do this, we must assume that the sanction it gave to the verdict was justified by the facts and circumstances of the case, of which it was in a much better position to judge than we are.

Judgment affirmed.

The Board of Commissioners of Perry County v. Lomax⁴⁰

Where the physician selected by the County Commissioners is incompetent the overseer may bind the county by employing a competent medical practitioner.

Fox, J.: The material facts involved in this case are as follows: On the 10th day of August, 1889, one Mathias Sitzman was a pauper, living in Clarke township, Perry County, Indiana, and had at that time been confined to his bed for six weeks with a diseased leg and was very much emaciated and in a critical condition; that in order to save his life an amputation of his leg was necessary; that in June, 1889, a physician by the name of Foster was employed by the board of commissioners of said county to render medical aid to the poor of said township, he having graduated as a physician upon the 21st day of February of the same year. At the time it became necessary to perform the operation above mentioned, the said Foster was inexperienced in surgery, and had no surgical instruments, and lived fifteen miles distant from this pauper. The township trustee, knowing the critical condition of the pauper, and believing from the facts above mentioned, that the said Foster was wholly incompetent to perform the needed operation, procured two physicians of experience to visit the patient and if necessary amputate his leg. After making due examination they declined to do so, giving as a reason that in their opinion he would not survive the operation. The trustee, having information that an operation by a skilled surgeon was absolutely necessary to save the pauper's life, saw the appellee and employed him by giving him the following written statement:

"DIXON VALLEY, IND., Aug. 10. 1889.

"Dr. Wm. Lomax, Bristow, Indiana:

"DEAR SIR: You will please go and examine Mathias Sitzman, a pauper of Clark township, Perry county, Indiana, and if in your judgment his leg should be amputated,

⁴⁰ 5 Indiana Appellate 567 (1893).

call a legal board of physicians, yourself included, and perform the operation, and also give him all necessary medical assistance, and charge Perry county a reasonable bill for said services."

M. M. DIXON

"Overseer of the Poor, Clark Township."

Thereupon the appellee took charge of the pauper as his patient, and after making the proper preparation amputated his leg and attended him until he recovered, charging for his services the sum of \$150. He presented his claim, properly verified, to the board of commissioners and payment was refused. He appealed to the Perry Circuit Court and there obtained a judgment against the county for \$140. A motion for a new trial was filed and overruled; and a judgment rendered against the county. From this judgment the board of commissioners appeal to this court, and assign as error the action of the court below in overruling the motion for a new trial.

In the complaint it was charged that Foster, as the township physician, "refused to do and perform the said operation, giving as a reason for his refusal that he was not sufficiently experienced in surgery; that he did not have the necessary instruments to perform such an operation, and that he resided at too great a distance from the said Sitzman to render him the proper attention after the operation had been performed." There was evidence given at the trial tending to prove that the said Foster was not qualified to perform the operation by reason of a want of skill and experience, yet it did not appear that he had been requested so to do by the trustee before the appellee was employed. Did this constitute a fatal variance between the allegation and proof? It appears that the case was tried upon its merits by the parties, without regard to the question of a demand upon and a refusal by the said Foster to attend the case, nor do counsel attach any importance to it in argument here. Section 658, R.S. 1881, provides that "No judgment shall be stayed or reversed, in whole or in part, by the supreme Court, for any defect in form, variance, or imperfections contained in the record, pleadings, process, entries, returns, or other proceedings therein, which by law might be amended by the court below, but such defects shall be deemed to be amended in the Supreme Court; nor shall any judgment be stayed or reversed, in whole or in part, where it shall appear to the court that the merits of the cause have been fairly tried and determined in the court below." The purpose of this statute is unmistakable, and in applying it to a case like this it is not necessary to extend its spirit beyond its letter. Taking it to mean exactly what it says, forms, variance and imperfections in the pleadings will be disregarded when they might be amended in the court below; neither will a judgment be reversed if the cause has been fairly tried and determined in the court below. See *Watt v. Pittman*, 125 Ind. 168; *Buchanan v. State, ex rel.*, 106 Ind. 251; *Daniels v. McGinnis*, 97 Ind. 549; *Gardner v. Haney*, 86 Ind. 17; *Waltz v. Waltz*, 84 Ind. 403; *Campbell v. Nebeker*, 58 Ind. 446.

The purpose of the appellee in bringing this suit was to recover money which

he claimed was due him from the appellant for services rendered. The material question, therefore, was, did such indebtedness exist? The mere fact that the trustee did not request the county physician to perform the operation required was, under the circumstances, wholly unimportant.

The law, looking through the shadow to the substance, required no such useless formality. It was shown at the trial that such physician had no experience as a surgeon; that the operation to be performed required great skill, which he did not possess. If the trustee, having knowledge of these facts, had requested him to perform the operation, and he had consented to do so, the trustee would not have been justified in recommending or requiring the pauper to submit to it. Paupers, by reason of their unfortunate condition, do not, when suffering from disease, become the subjects for experiment and practice upon the part of tyros in medicine and surgery. The law is more generous than this. This is plainly manifested by section 5764, R.S. 1881, which, among other things, provides as follows: "It is hereby specially made the duty of such board to contract with one or more skilful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum." Would the board discharge this statutory obligation by employing a person who was unskilled in either medicine or surgery? Under the circumstances, as they appear in the record, it was unnecessary for the plaintiff below to allege or prove that the county physician refused to perform an operation that he could not do by reason of his want of knowledge and skill. The theory of the law is that in cases where a demand or request is necessary before a cause of action accrues, it is upon the supposition that the person upon whom the demand or request is made has the capacity or ability to perform. The learned judge who presided at the trial evidently took this view of the case in giving judgment for the appellee.

Section 6069, R.S. 1881, makes it the duty of counties, as such, to "relieve and support all poor and indigent persons lawfully settled therein." Section 6066 provides that "The township trustees of the several civil townships of the State shall be the 'overseers of the poor' within their respective townships." Section 6071 provides that the "overseers of the poor" shall have the oversight and care of all poor persons in their respective townships as long as they remain a county charge, and "shall see that they are properly relieved and taken care of." Thus it will be seen that paupers are a county charge; that a township trustee, as an "overseer of the poor," is required to "care for and relieve" the paupers in his township. He is, for this purpose, an agent of the county. Section 5764 provides that the board of commissioners may contract with one or more physicians "to attend the poor generally"; that when they do this no one has authority to employ others for this purpose. This section, however, is qualified by the following proviso: "Provided, that this section shall not be so construed as to prevent overseers of the poor, or any one of them in townships not otherwise provided for, from employing such medical or surgical services as paupers within his or their jurisdiction may require." It is manifestly the policy of our poor laws to

properly and adequately care for and relieve the distress of those who are so unfortunate as to become paupers. It is the duty of the properly constituted authorities to see that this is done without any false ideas of economy upon the one hand or a needless extravagance upon the other. If a pauper is sick, it is the duty of the township trustee to see that he has a competent physician to attend him. If a competent physician has been contracted with by the county for this purpose, then he should be called. If surgery is required, then a competent surgeon should be called. If none has been provided by the county, then it is the duty of the township trustee to select and employ one to perform the needed service. Will it be contended that the board had made a proper and adequate provision for the needs and wants of the pauper in this case? He was in a critical condition, and his life depended upon the immediate attention of a skilled surgeon. The trustee, at the trial, among other things, testified as follows: "I had been notified that he was in a critical condition, and should be seen to by the township authorities. I had been acquainted with him and his mother nearly all my life. I knew her to be a lady of respectability and him to be a man of respectability. I found him in a dreadful condition. His leg was as large as my head. I was requested by the citizens of the community to have his leg amputated." There is no good reason why counties, as public corporations, should not faithfully discharge the obligations imposed upon them as well as individuals. When they employ incompetent persons to perform important services they do not do their duty. A failure upon their part to do their duty does not justify them in refusing to recognize those who do.

The mere fact that a board of commissioners employs physicians to attend the poor of a county will not operate as a limitation upon the power of a township trustee to employ others in cases of emergencies. *Board, etc. v. Osburn*, 4 Ind. App. 590; *Washburn v. Board, etc.*, 104 Ind. 321; *Board, etc. v. Ritter*, 90 Ind. 362; *Board, etc. v. Seaton*, 90 Ind. 158; *Conner v. Board, etc.*, 57 Ind. 15; *Morgan County v. Seaton*, 122 Ind. 521. The law upon this point is well and tersely stated by Crumpacker, J., in *Board, etc. v. Osburn, supra*, in the following words: "There is but one power to employ medical attendance upon the poor, and when that is exercised by the board of commissioners the trustees are without authority respecting it. But in the event the physician employed by the board of commissioners abandons the contract or refuses to perform it, or is at such a distance that his attendance can not be readily procured and an emergency exists, it is equivalent to no provision by the county, and the trustee is authorized to act. . . . Upon the same principle, if the county physician lacked the skill and experience necessary to render reasonably efficient services in any case, and the dictates of humanity seemed to require it, the trustee would be authorized to employ special medical assistance. Section 5764, R.S. 1881, contemplates the employment by the county of reasonably skilful physicians who are conveniently accessible, and if, for any reason, there is no such physician to treat a given case, the trustee may employ one."

"The question as to the necessities of persons relieved is a matter for the determination of the trustee, and, in the absence of fraud or collusion, his determination is conclusive," *Board, etc. v. Seaton, supra*. See, also, *Board, etc. v. Holman*, 34 Ind. 256. As to whether a township is not already provided with physicians is a question of fact. *Board, etc. v. Boynton*, 30 Ind. 359. As to the relative duties of a trustee and a board of commissioners, see *Robbins v. Board, etc.*, 91 Ind. 537; *Board, etc. v. Seaton, supra*, and *Washburn v. Board, etc., supra*. In this case the trustee was justified in employing a skillful surgeon to perform the required operation. The work was well done, and the charges therefor reasonable, and should be paid.

The judgment is affirmed, with costs.

The State, ex rel. Board of Directors of the County Infirmary of Darke County, Ohio v. Overman, Sheriff of Randolph County⁴¹

This is really a case in pleading but it is an interesting illustration of interstate relationships. If a poor insane person is illegally removed to another state, mandamus is not the remedy by which the offended jurisdiction obtains redress and the renewed detention of the insane person.

From Randolph Circuit Court; *A. O. Marsh*, Judge.

Mandamus by directors of county infirmary of Darke county, Ohio, to compel Thomas J. Overman as sheriff of Randolph county, Indiana, to receive an insane pauper into his custody. From a judgment in favor of defendant, plaintiff appeals. *Affirmed*.

A. L. Clark and Anderson & Bowman, for appellant.

J. W. Macy, J. P. Goodrich, A. L. Bales, Theo. Shockney and J. J. Cheney, for appellee.

DOWLING, J.: This was an application for a writ of mandate requiring the appellee to receive into his custody, and to detain in the jail of Randolph county, Indiana, one Roll Joseph, an insane person. Alternative writ issued. Demurrers to complaint and to alternative writ, because the appellant had not the legal capacity to sue, and for want of facts, sustained. Judgment on the demurrers. The error assigned is upon the rulings on the demurrers.

The material allegations of the complaint were these: Thomas J. Overman was, at the time of the commencement of the action, the sheriff of Randolph county, Indiana; on December 8, 1897, one David B. Strahan was his predecessor in that office, and continued to discharge its duties until succeeded by the said appellee; the relator is the board of directors of the county infirmary of Darke county, Ohio; by the provisions of Sec. 961 of the revised statutes of Ohio, the relator is a body corporate and politic by the name of the board of

⁴¹ 157 Indiana 141 (1901).

directors of the county infirmary of the county of Darke, in the state of Ohio, and by that name may sue and be sued in any court within said state of Ohio.

On December 8, 1897, one Roll Joseph was prosecuted upon information and affidavit in the Randolph Circuit Court, for the county of Randolph, in the State of Indiana, for the crime of burglary. A plea of insanity was filed on his behalf, and, upon the trial, the defendant was acquitted, upon the ground that he was of unsound mind at the time the offense was committed; thereupon, the court ordered that he be kept in custody until proceedings for his commitment to the Indiana Hospital for the Insane could be taken; such proceedings were had before two justices, who found and certified that Joseph was an insane person, and a proper subject for treatment at the hospital for the insane; that it was dangerous to the community to permit him to be at large; that he was held in custody in the county jail of Randolph county, and that he had a legal settlement in that county; an application was made for the admission of the said Joseph to such hospital, but he was not admitted for want of room; afterwards, the sheriff of Randolph county, who was *ex officio* its jailer, took Joseph from the jail of Randolph county, secretly conveyed him into the county of Darke, and there left him on the roadside, with no person to restrain him from injuring the persons and property of the citizens of Darke county; the sheriff of Randolph county had no warrant or other authority for his proceedings, and took them for the purpose of ridding himself and the county of Randolph of the custody, burden, and expense of taking care of Joseph, and casting that burden on Darke county; on the day Joseph was so left in Darke county, to wit, June 29, 1898, he was arrested for the malicious destruction of property in said county, and in default of bail was committed to jail on said charge to await the action of the grand jury of said county; no bill was found, however, and the release of Joseph was ordered by the court; it appearing to the court that Joseph was dangerously insane, and a pauper, that he had no legal settlement in the state of Ohio, but that he had such settlement in the county of Randolph, in the State of Indiana, the court further ordered that he be held in jail by the sheriff of Darke county as a dangerously insane person, until he could be transported to the State of Indiana; as soon as the sheriff of Darke county became aware of Joseph's condition, and of the manner in which he was brought into the said county of Darke, he tendered the said Roll Joseph to the sheriff of Randolph county, Indiana, and demanded that he receive him back into his care and custody, which the said sheriff refused to do, and as a result thereof the said Joseph may become a permanent charge upon the said county of Darke, to the damage of the relator; by the provisions of Sec. 969 of the revised statutes of Ohio, the relator, the board of directors of the county infirmary of Darke county, Ohio, may remove any person becoming a charge upon the county, who has no legal settlement in the state of Ohio, into the county and state where such person has a legal settlement.

The only question before us for determination is whether the relator is en-

titled to the extraordinary remedy demanded. The writ of mandate can be issued only (1) when the relator has a clear legal right to the performance of a particular act or duty at the hands of the respondent, and (2) where the law affords no other adequate or specific remedy to secure the enforcement of the right and the performance of the duty which the relator seeks to coerce. High on Ex. Leg. Rem., Sec. 10.

Upon the most liberal view of the appellant's case it cannot be said that a foreign political corporation has a clear right to cause an insane and dangerous pauper, having a settlement in Indiana, to be imprisoned in a jail in the latter State. The sole purpose of this proceeding, as set forth in the complaint, is to compel the sheriff of Randolph county to receive and confine a person alleged to be insane, dangerous, and a pauper. It is possible that this may be an official duty owing to the insane person and to the citizens of Randolph county, but it is in no sense a duty owing by the sheriff of Randolph county to the board of directors of the county infirmary of Darke county, Ohio. High on Ex. Leg. Rem. Sec. 10.

The order of the court of common pleas of Darke county, Ohio, that the pauper be held by the sheriff of that county until he could be transported to the State of Indiana, had no extraterritorial effect. The order of the court did not undertake to direct what disposition should be made of the pauper after his deporation from the state of Ohio, but, if it had, it would have created no obligation on the part of the sheriff of Randolph county to execute such judgment. Counsel for the relator contend that the right of the board of directors of the county infirmary of Darke county to compel the sheriff and jailer of Randolph county to receive and imprison the insane pauper is derived from the Constitution of the United States, article 4, Sec. 2, which secures to the citizens of all the states the privileges enjoyed by the citizens of each state. But this clause has never been understood to extend to foreign corporations, or to embrace the right to maintain actions of the character of that at bar.

The several states of the Union have adopted various methods to protect themselves against the immigration of paupers from other states, but we have been referred to no case, state or federal, in which it has been held that it is necessary or proper for one state to go into the courts of another to coerce the latter to receive and take care of its own paupers. On the contrary, it has been decided that where a statute makes it penal to bring a pauper into the state, the officers of another state, into which a pauper has been wrongfully removed, who return him to the place where he has a legal settlement, may be convicted under the statute. *Winfield v. Mapes*, 4 Denio 571.

We conclude, therefore, that, upon the ground that the right of the relator to compel the sheriff and jailer of Randolph county, Indiana, to receive and imprison the insane pauper was not clear, the demurrer to the complaint for want of facts might well have been sustained.

But it is equally evident that if any cause of action on the part of the relator existed, *mandamus* was not the proper remedy for its enforcement. Other ade-

quate remedies were available by which any rights held by the relator could have been asserted and maintained. If the security of the persons and property of the citizens of Ohio required that the insane pauper should be restrained of his liberty, the laws of that state authorized his detention in prison. If the state, or any of the agencies through which it cares for its poor, were wrongfully subjected to expense for the maintenance of the insane pauper, the question of the liability of Randolph county to reimburse the state of Ohio, or the county of Darke, or the relator, for such expense could have been presented to the courts of this State by an action to recover the same. Or, it may be, that the mere removal of the poor person out of the state of Ohio would have accomplished the end desired. *Ekin v. United States*, 142 U.S. 651, 12 Sup. Ct. 336, 35 L. Ed. 1146.

The statutes of the state of Ohio, defining the rights and powers of the board of directors of the county infirmary of Darke county, were not set out in the complaint, and it does not appear that this corporation had such an interest in the subject of the action as authorized a suit in its name as relator, even if a cause of action existed.

The court did not err in sustaining the demurrers to the complaint. Judgment affirmed.

MONKS, C. J., did not participate in this decision.

Gardner et al. v. Board of Commissioners of Knox County⁴²

The county is liable for the burial costs of a deceased soldier when those costs are authorized by the overseer of the poor, even if afterwards it is learned that they might have been collected from his family without causing too great hardship for the family.

From Knox Circuit Court; O. H. Cobb, Judge.

Claim by Dexter Gardner and others for the burial of a soldier. The claim was disallowed by the board of commissioners, and an appeal was taken to the circuit court. From the judgment of the circuit court in overruling demurrer to an answer by commissioners, claimants appeal. Transferred from Appellate Court, under Sec. 1337u Burns 1901. *Reversed*.

C. E. Dailey and H. R. Lewis, for appellants.

HADLEY, J.: The record discloses that September 12, 1900, Patrick Grogan, an ex-Union soldier, and resident of Vincennes township, Knox county, Indiana, died; and on the same day the trustee of said township issued to the appellants, as undertakers, the following order: "Burial Order. Trustee's office, Vincs. tp., Knox Co. September 12, 1900. To D. Gardner & Son: Please furnish coffin and bury Patrick Grogan. Sex, m.; age, 74; color, w.; nationality, Irish; residence, city; and charge same to Knox county, returning this as a voucher to the board of commissioners. James E. Kackley, trustee." Said trustee also reported in writing to the board of commissioners of the county that he had, pursuant to

⁴² 161 Indiana 149 (1903).

law, caused the body of Patrick Grogan, an ex-Union soldier, to be interred at county expense, the said Grogan not having left means sufficient to defray the necessary expenses of said burial without distressing his family; setting forth in said report the name, date of death, occupation, age, rank, service of the soldier, and an itemized statement of the expense incurred by the burial, amounting to \$50. February 27, 1901, appellants filed in the Auditor's office their claim against the county for \$50 for said burial, and, on March 8th, the claim was disallowed. Appellants appealed to the circuit court, where the commissioners filed an answer in five paragraphs. A demurrer was sustained to the first, third, fourth, and fifth, and overruled to the second. The claimants refusing to plead further, and electing to stand by their demurrer to the second paragraph of answer, judgment was rendered against them for costs, and they appeal.

The second paragraph is in these words: "That said Patrick Grogan was possessed of real property, unencumbered, at the time of his death, of the value of \$2,000, and of personal property of the value of \$500, and that the payment of said funeral expenses by his estate or administrator would not distress his family." The only assignment is the action of the court in holding that this answer presents a good defense to the claim. The appellee has filed no brief. We must assume, because no other appears, that appellee rests its defense solely upon the ground that it had the right to show at the trial, eight months after the body was buried, that the case was not within the provisions of the statute, in that the estate of the soldier was sufficient to have met the expense of the burial without distressing his family.

All the legislation upon the subject, beginning in 1889 (Acts 1889, p. 139) and again in two acts in 1899 (Acts 1899, p. 397; Acts 1899, p. 406), was considered, and in substance reenacted in more concise and certain terms in 1901 (Acts 1901, p. 323, Secs. 34, 35, Secs. 8165j, 8165k Burns 1901), and which, as pertinent to this case, provides that it shall be the duty of the overseers of the poor (township Trustees) in their respective townships to look after and cause to be interred by the undertaker designated by the family, in a decent and respectable manner, in any cemetery other than those used exclusively for the pauper dead, at an expense not to exceed \$50, the body of any honorably discharged soldier who may have at the time served as a regular or volunteer soldier in the army of the United States, who may have died a resident of this State, not leaving means sufficient to defray the necessary funeral expenses, or whose immediate family is in such indigent circumstances that its members would be distressed by the expense of such burial. "The records of such burials shall not be kept in the pauper books of the township; but such burials shall be promptly reported by the overseers of the poor to the board of county commissioners and shall be allowed and paid out of the county treasury as other legal charges against the county are allowed and paid." Sec. 8165k, *supra*. It is manifest from the character of this legislation that the legislature was moved by the patriotic purpose of recognizing, on behalf of the State, that that class of citizens who had borne

the hardships and perils of the public defense, is entitled to a decent and respectable burial, without oppression to their families, and without having cast upon them the implication of being paupers. The object of the statute is patriotic and benevolent as well as prudential, and invokes at our hands a liberal construction. The claim being statutory, we must look alone to the statute for the right, and for the duties of public officers in relation thereto. The duty imposed upon the trustee, to look after and cause to be interred, carries with it the power to employ an undertaker to perform the burial. Whether the particular subject comes within the terms of the statute, is not left to the county commissioners, or to anyone else than the township trustee. He must exercise his best judgment, and, when he has decided, and employed an undertaker, if the employment is free from fraud or collusion, it will be conclusive against the county. The undertaker is not required to look beyond the power of the trustee to make the contract, and, if he proceeds in good faith to perform the service, he becomes entitled to recover of the county the reasonable value or contract price of his services and furnishings, not exceeding \$50. *Board, etc. v. Hinson*, 29 Ind. App. 189.

It would speak little for the magnanimity and benefactions of the State, if after such a burial, and only the sound judgment of the trustee is involved, courts are to be invaded, juries impaneled, and the bereaved friends of the deceased soldier called as witnesses to determine whether the discretion of the trustee was well founded. We said in *Morgan County v. Seaton*, 122 Ind. 521, 525: "It has been held, and with eminent propriety, that where the overseer of the poor, in the exercise of his discretion, decided that an individual was a poor person, and entitled to relief under the poor laws of the State, and in pursuance of such decision, employed a physician to render medical aid, his judgment was conclusive on the county unless connivance or fraud could be shown." See, also, *Board, etc. v. Holman*, 34 Ind. 256; *Conner v. Board, etc.*, 57 Ind. 15; *Board, etc. v. Seaton*, 90 Ind. 158; *Board, etc. v. Jennings*, 104 Ind. 108; *Board, etc. v. Harlem*, 108 Ind. 164. The principle involved here is precisely the same. It follows that neither the commissioners nor the circuit court had power or authority to inquire into the financial condition of the soldier at the time of his death, nor into the condition in which he left his family. The answer therefore was insufficient.

Judgment reversed, and cause remanded, with instructions to sustain the demurrer to the second paragraph of answer.

Board of Commissioners of Harrison County v. Hunter⁴³

By an Act of 1899, the county commissioners were deprived of any authority to pay for the care of any poor person outside of an institution. In this case services, the value of which was estimated to be \$77.50 had

⁴³ 161 Indiana 478 (1903).

been rendered in a home. The claim was, however, disallowed since the statute specifically forbade payment under these circumstances.

MONKS, J.: It appears from the special finding of the court, made at the request of appellant: That in 1895 one Addie Hunter, an adult, was adjudged to be "insane, and dangerous to the community if suffered to remain at large," by a justice of the peace of Harrison township, Harrison county, Indiana, in a proceedings brought under the act of 1855 (Acts 1855, p. 133, Secs. 6987-6995 Burns 1901, Secs. 5142-5150 R.S. 1881 and Horner 1901); that said justice of the peace appointed appellee, a resident of said county, to take charge of and confine said Addie Hunter; that said justice filed in the office of the clerk of the Harrison Circuit Court a transcript of the proceedings had before him in said cause, as required by Sec. 6991, *supra*, and at the September term, 1896, of the Harrison Circuit Court, said cause was again tried, and a jury found against said Addie Hunter, and said court confirmed the appointment of appellee made by said justice of the peace, as provided in Sec. 6991, *supra*; that appellee took charge of and confined said Addie Hunter. Afterwards, appellee filed claims against appellant for taking care of and confining said Addie Hunter, and for boarding, lodging, and clothing her from June 4, 1901, to September 5, 1901, and for the same from September 4, 1901, to January 8, 1902—in all thirty-one weeks—at \$2.50 per week—in all \$77.50—which claims were disallowed and rejected by said board of commissioners; that in February, 1902, appellee commenced this action to recover on the claims so disallowed by appellant, and the court found that appellee had charge of and confined said Addie Hunter from the 4th day of June, 1901, to January 8, 1902, a period of thirty-one weeks, and that she boarded, lodged, and clothed her during said period, and that said service, boarding, lodging, and clothing for said period were worth \$77.50; that no part of the same has been paid. It appears from the said finding that said Addie Hunter had no family or property, was a poor person, and that she was not an inmate of any county institution. The court stated as a conclusion of law that appellee was entitled to recover the sum of \$77.50 and costs, to be paid out of the county treasury, to which conclusion of law appellant excepted. Final judgment was rendered in favor of appellee. The errors assigned challenge the correctness of said conclusion of law.

This case was appealed since the taking effect of the act of 1903 (Acts 1903, p. 280). The said act of 1855, *Supra*, was held by this court to be constitutional in *Board, etc. v. Moore, ante*, 426.

It will be observed that appellee sued in this action for services rendered, and clothing, board, and lodging furnished, after the taking effect of the act of 1899 known as the county reform law. Acts. 1899, p. 343, Secs. 5594g-5594e2 Burns 1901. Section 33 of said act, being Sec. 5594m1, *supra*, expressly provides that "Hereafter the board of county commissioners, or any authority, shall have no power whatever to make any allowance for voluntary services, or for things voluntarily furnished, and no power to pay, or cause the same to be paid for,

out of the county treasury; they shall have no power to allow, pay or cause to be paid any money out of the county treasury to or for the relief or support of any pauper or poor person whatever, or liable to become such, if such person be at the time not an inmate of some county institution. They shall have no power to contract for services of any physician to attend upon any poor of the county other than inmates of the county institutions; . . . All laws or parts of laws conferring power upon any authority to make payment out of the county treasury for any of the matters mentioned in this section, are hereby repealed."

It is evident that so much of Sec. 4 of the act of 1855 (Sec. 6990, *supra*) as provided for the payment of a reasonable compensation out of the county treasury to the person having charge of such insane person, when such insane person was a poor person, was repealed by said Sec. 33, *supra*, unless such person was an inmate of a county institution. Appellee was bound to take notice of the law, and as said Addie Hunter was a poor person, all services rendered, and board, lodging, and clothing furnished after said county reform law took effect in 1899 were voluntary, and for which she can not recover. *Turner v. Board, etc.*, 158 Ind. 166; *Board, etc. v. Mowbray*, 160 Ind. 10; *Board, etc. v. Pollard*, 153 Ind. 371, 375. It follows that the conclusion of law was erroneous.

Judgment reversed, with instructions to restate the conclusion of law in accordance with this opinion, and to render judgment in favor of appellant.

Newcomer et al. v. Jefferson Township, Tipton County⁴⁴

Although the reform act of 1899 limited the liability of county officials and specified certain duties of township officials, the authorization to provide emergency relief at the cost of the township was equally imperative.

MYERS, J.: Appellants were copartners in the practice of medicine and surgery, duly licensed. A boy fourteen years of age, a resident of appellee's township, while riding on a freight train, without right, fell off. His right leg was crushed off just below the knee, and the heel and sole of the left foot were crushed. Suit was instituted by appellants against the township for surgical and medical attention rendered the boy, by a complaint which after alleging the foregoing facts, alleged that in October, 1906, the boy was about fourteen years of age, had no money, property or means of any kind, character or description, and no expectancy of any kind. That his father was a resident of the township, but had no home to which to remove the boy, had no money or property of any kind or character, but was wholly and entirely destitute of means of any kind or description. That the boy was removed to the home of one Bunch of Jefferson Township, and there cared for by the said Bunch as a matter of charity. That the boy had no relatives that were able to care for him. That in a few moments after the injury hereinbefore described, plaintiffs were called to the boy, and

⁴⁴ 181 Indiana 1 (1913).

found him suffering, with a copious hemorrhage from the leg which had been crushed off. That the physical condition of the boy was such that delay in the treatment was sure to result in death to the boy from hemorrhage, and from the effects of the shock. That it was about ten miles to the township trustee of Jefferson Township, and that there was no means of reaching him by telephone or otherwise, except to visit him by buggy, or some like conveyance. That the accident occurred about nine o'clock at night, and that a delay necessary even to telephone, had there been a line of telephone, or to communicate by other means, might and would have resulted in the death of the boy. That under the emergencies existing, plaintiffs took charge of the boy, amputated the leg that was crushed, just below the knee, and dressed the same; also amputated and removed the mashed sole and heel of the other foot, giving it the necessary dressing, and rendering all the services necessary and proper. That they remained with him all night, caring for him, and giving him such restoratives and stimulants as were proper and necessary on account of the emergency and urgency of the case as hereinbefore set out; that there was an appropriation by the advisory board of the township of Jefferson for the purpose of paying medical expenses for indigent and poor persons of said township for each of the years 1906, 1907, 1908 and 1909; that defendant during the year 1906, had no physician employed to treat the poor of said township. That the trustee of Cicero Township resided eight miles from the city of Tipton, and that there was no means of communicating with him, except by messenger, traveling by horse and buggy, or some such transportation, and the boy would have died before communication could have passed between said trustee and these plaintiffs. That plaintiffs knew that the boy's life depended upon the prompt treatment of his said injuries, that they also knew he was a pauper, but believed the defendant was liable for the services, rendered under the emergency of the case; they rendered such services on the credit of the defendant, and not otherwise; that they have frequently demanded pay for their services from said township, which demand has been refused; that the services in the amputation of said leg, and dressing the foot, and medical services rendered at said time are of the value of \$150, which is due and unpaid, and demand is made therefor. A demurrer for want of facts was sustained to this complaint, and the ruling is the sole alleged error presented. The suit was begun February 15, 1908. It is the contention of appellee that townships are not liable for relief to poor or necessitous persons outside of public institutions for surgical or medical aid, however necessitous, irrespective of the circumstances or conditions, unless it is directed by the overseer of the poor; that he is the sole and conclusive judge of the necessity, and as to whom he will or will not employ to render aid, and as to whether aid shall be rendered. It may be conceded as a general rule that a claim against a county or township, can only be founded upon a contract with the proper officer under authority of a statute, acting within the scope of his statutory authority, or upon a statute. Prior to the enactment of 1901 (Acts [1901], p. 323, P. 9741 *et seq.* Burns 1908), we had

in this State a number of disconnected statutes touching the subject of the care of the poor, and poor relief, and the burial of the poor and destitute sailors and soldiers, but by that act the entire subject was revised. Prior to that time the expense of care and burial of the poor was chargeable against the counties, as were also, and are yet, the charges for the interment of indigent soldiers and sailors. Since the passage of that act, the expense of care and burial of the poor other than soldiers and sailors, is chargeable against the township of which they are residents, or in which their demise occurs. PP 9746, 9773, 9774, 9778 Burns 1908, Acts (1901), p. 323, Acts (1907), p. 330. This act was probably passed in view of prior holdings of this and the Appellate Court, notably in *Sherfey, etc., Co. v. Board, etc.* (1901), 26 Ind. App. 66, 59 N.E. 186. The act also covers the subject of temporary aid, as to which there are restrictions imposed, in cases outside of county asylums, and in committing to those institutions. PP 9744, 9747, 9756, 9761-9763 Burns 1908, Acts (1901), p. 323. This act repeals all former laws on the subjects, and comports more with our ideas of benefactions and aid to the distressed and necessitous. It goes farther than any previous act. By P 9746, *supra*, the overseer is given oversight of the poor of his township, and required to see that they are properly relieved and taken care of in the manner provided by law, and elsewhere in the act it is pointed out what he shall do. It then provides for cases of necessity, and for prompt provision of medical and surgical attendance and medicines for all poor in his township, outside of public institutions. Now suppose that no one but the trustee is authorized to act, and he is absent, or cannot be found, and death is imminent, unless aid is given. Shall the person be permitted to die, because the overseer cannot be found? Or, suppose he is found, and for reasons of his own, or because he thinks it unnecessary, refuses to employ aid, is it enough to say that the law will be satisfied by prosecuting him criminally for failure to discharge a plain statutory duty, even though a human life is sacrificed? The services of a surgeon or physician cannot be required as a matter of charity, and in the meantime death ensues. It is probably different where there is an opportunity, by reason of conditions, to communicate with the overseer, or where he can have an opportunity to examine into the conditions; there he should be called on. But suppose in an emergency he refuses for any cause, to act, or cannot be reached. The law is just as mandatory that the relief shall be given at the expense of the township, as it is that the overseer shall provide it. It is therefore the law's mandate in such an emergency as is here shown, which raises an implied liability to one who renders such necessary and prompt service as is here shown, for the reasonable value of the service. It is not a voluntary service, but an obligation imposed by law. *Board, etc. v. Cole*, 9 Ind. App. 474, (1893), 36 N.E. 912. It may also be granted that the obligation does not arise upon the request of some one other than the overseer, but it is imposed by the statute, where the circumstances are such as disclose the necessity for prompt action by those who are capable of judging of the necessity and impending peril. But it is said that the provisions of the act of 1901 are expressly

controlled by the county reform law of 1899, and are aimed to be part of a county system, and that any payment for services not directed by the overseer, is a voluntary payment, prohibited by the county reform act of 1899. P 5918 *et seq.* Burns 1908, and especially P 5950 Burns 1908, Acts (1899), p. 343. In the first place, it is to be observed that that act refers to county expenditures, and has no reference to the mandatory requirements of a later statute, as to township expenditure, except that overseers are limited in expenditures in certain cases to temporary aid, not exceeding \$15 except upon authority of boards of commissioners, but burials and some other exceptions are made. PP 9747, 9748, 9751, 9752 Burns 1908, Acts (1901), p. 323. The general plan is, to provide in the county asylums for the poor, as provided in P 9744, *supra*, but the act indicates its acknowledgment of other necessitous conditions, which may arise. Our holding in no wise conflicts with the county reform act, or with the case of *Board, etc. v. Hunter*, 161 Ind. 478 (1903), 68 N.E. 1022. That case arose after both the acts of 1899 and 1901 went into effect, and was not one for expenses of temporary relief, limited by the act of 1901 to \$15, but the claim was for services alleged to have been rendered the county, after the county reform act was passed, which repealed the former law as to the expense of care for the insane, outside of the county institutions, and expressly prohibited its allowance. This was doubtless also due to the existence of other acts at that time expressly providing for the care of the insane in the State institutions PP 3691-3739 Burns 1908, PP 2842-2878 R.S. 1881, and amendments thereto (Acts 1889, p. 391, Acts 1901, p. 529 and other acts there to be found), which, also, doubtless repealed the portion of the section of the act of 1855 (Acts 1855, p. 133, P 5145 R.S. 1881) involved in that case.

The judgment is reversed with instructions to the court below to overrule the demurrer to the complaint, and for further proceedings not inconsistent with this opinion.

NOTE.—Reported in 103 N.E. 843. See, also, under (1) 30 Cyc. 1150; (2) 30 Cyc. 1128. As to law of vagrancy, see 137 Am. St. 940. As to the question of the right to compensation from public for relief furnished poor person, in cases not provided for by law, or where there has been no compliance with statutory prerequisites, see 39 L.R.A. (N.S.) 161. As to the liability of the public for medical services to indigent person in absence of notice or request, see 9 L.R.A. (N.S.) 1234.

Wayne Township v. Brown⁴⁵

From Wayne Circuit Court; *Gustave H. Hoelscher*, Judge.

Action by Clarence M. Brown against Wayne Township of Wayne County, Indiana. From a judgment for plaintiff, defendant appealed. *Affirmed*.

The Poor Relief System of Indiana is both a county and township system and an act authorizing townships to establish commissariats is not unconstitutional.

⁴⁵ 205 Indiana 437 (1933)

HUGHES, J.: This was an action by the appellee, as the assignee of a large number of accounts held by certain creditors of the appellant, which accounts were incurred by the appellant in administering the poor relief of the township.

The complaint was in five paragraphs. The appellant filed a demurrer to each paragraph of the complaint; the demurrer was overruled; the appellant refused to plead further and judgment was rendered in favor of appellee for the amount sued for.

The complaint sets out five different situations pertaining to the poor relief in so many paragraphs as follows:

First: Claims on warrants and/or vouchers issued by the township trustee, same evidencing indebtedness of the township, which have been allowed by the county commissioners and an attempt made to sell bonds to secure money to pay the claims, and which bonds failed to sell.

Second: Claims on warrants and/or vouchers issued by the township trustee, same evidencing indebtedness of township, which have been approved by the county commissioners but no attempt made to sell bonds for the reason that the procedure was deemed useless and the expense of same avoided.

Third: Claims on warrants and/or vouchers issued by the township trustee, same evidencing indebtedness of the township which have not been approved by the county commissioners and for which no bond issues were authorized to meet payment of same.

Fourth: Claims against the township not evidenced by warrants and/or vouchers, the merchandise and products being sold to the Wayne township commissariat, same being operated for the relief of the poor under provisions of chapter 50 of the Acts of 1932.

Fifth: Claims against the township not evidenced by warrants and/or vouchers, the merchandise and products being sold to Wayne township commissariat for the operation of said commissariat, which is now being operated as above stated.

There are four main issues raised by the appellant as follows:

First: That the statutes provide for a method of administering poor relief, and as such the county and township are jointly responsible, and that the indebtedness for poor relief is a joint obligation of the two units.

Second: That the method provided by statute for administering poor relief is exclusive and must be followed and is a condition precedent to establishing liability upon either the township or county.

Third: That if there not be sufficient funds in the general fund of the county for advancement to the township for payment of poor relief claims, the proper officers should levy taxes to pay said claims, and if not done they should be mandated; and that the obstacle to levy taxes should be corrected by the legislature rather than the remedy sought by the appellee.

Fourth: That the Commissariat Act is unconstitutional.

1. In this state the poor relief is both a county and township system, as

stated by appellee, each working in separate and different lines, depending upon the nature and kind of relief that must and is required to be extended.

Prior to May 15, 1901, poor relief was a county system and duty exclusively. Revised Statutes 1881, Section 6069.

Since May 15, 1901, it has been administered by the county as to certain activities and by the township as to others.

2. The county has the duty to maintain a county asylum and other charitable institutions permitted by law. It is the duty of the county to maintain in the county asylum persons lawfully settled in the county as may have been placed there by the overseers of the poor, and may contract with charitable institutions in the state for the relief and support of the poor placed there as a public charge. Section 12258, Burns R. S. 1926.

The statute provides that the overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a charge, and shall see that they are properly relieved and taken care of in the manner required by law. Section 12260, Burns 1926.

The overseer of the poor in each township is the township trustee. Section 12258, Burns 1926.

Section 12258, Burns 1926, provides: ". . . The county council shall appropriate and the board of commissioners in each county shall advance to the township trustee the money necessary for the relief and burial of the poor in each township, which shall be accounted for and repaid to the county treasurer as hereinafter provided."

Section 12291, Burns 1926, provides that: "When the township levies are made, the proper authorities of each township for the poor of which any such advancements have been made shall levy a tax upon the property of such township, to reimburse the county treasurer for payments made on such advancements, which taxes shall be collected as are other township taxes, and shall be paid into the county treasury. . . ."

Section 12266, Burns 1926, provides: "Whenever an overseer of the poor shall give aid, other than burial, medical relief, or assistance to children under the compulsory education law, to any poor person or family to the amount of fifteen dollars, it shall be unlawful for him to furnish any further aid to such poor person or family until he shall have presented a statement of the case to the board of county commissioners, with a schedule stating the following facts. . . ."

The Act of 1931, page 66, provides: "That any civil or school township in the state being indebted, or hereafter becoming indebted, and whose indebtedness is or shall be, evidenced by bonds, notes, judgment or other obligations heretofore, or hereafter, issued, or negotiated by such township, or rendered against such township, may for the purpose of funding or refunding such indebtedness, or any part thereof, reducing the rate of interest thereon, extending the time of payment and canceling so much thereof as may be due or shall hereafter become due by the vote of two-thirds of the members of the township ad-

visory board, and with the approval of the township trustee, issue its bonds, with interest coupons attached, for an amount not exceeding in the aggregate the whole amount of indebtedness of such township; . . . The township advisory board and the township trustee of such township shall add, or cause to be added, in addition to any tax otherwise provided by law, to the tax duplicate of such township a levy sufficient to pay the yearly interest on such bonds and also not less than five cents on the hundred dollars tax valuation to provide a sinking fund for the liquidation of the principal when it shall become due; which sinking fund, together with the interest increases or profit thereon, shall be applied solely to the payment of such bonds."

An Act of 1931, page 188, provides: "That the boards of commissioners of any county of the state are hereby authorized to borrow money to pay claims incurred and filed with such respective boards of commissioners by trustees for relief of the poor of their respective townships, in excess of the amounts which can be reasonably advanced out of the general fund of the county for such purpose under the provisions of existing laws. . . . The township trustee and the advisory board of the township . . . shall at the next meeting . . . after the making of said loan, levy a tax sufficient to reimburse the county for the loan, principal and interest. . . ."

An Act of 1933, being chapter 203, p. 981, provides: "That the board of commissioners of any county of this state are hereby authorized to estimate the amount of money which will be required for any period not exceeding six months in advance for the relief of the poor of the various townships of such county in excess of the amounts which can be reasonably advanced out of the general fund of the county for such purpose, under the provisions of existing laws. After estimating the amount of money which will be required for such period, the board of commissioners of any county of the state is hereby authorized to borrow money not in excess of the reasonable amount necessary for such purposes covering such period, and shall be authorized by ordinance of the county council, duly called into session, in the manner now provided by law, to issue the bonds of the county extending over a period not to exceed ten years, as other county bonds are issued, which bonds shall bear interest at the rate of not to exceed six per cent per annum payable semi-annually. . . . Such bonds shall be executed by the board of commissioners of the county issuing the same, . . . and such bonds shall constitute a county obligation. The boards of commissioners of the various counties of the state are hereby authorized to borrow such amount of money on temporary loans as may be necessary to meet poor relief payments for the respective townships for a period of not to exceed two months in advance . . . which loans shall be evidenced by the notes of such counties executed by the board of county commissioners, and attested by the auditor of such county, and shall constitute a county obligation."

An Act of August 16, 1932, p. 186, amended the Act of 1931, p. 188, in some particulars as to the selling of the bonds.

An Act was passed by the special session of 1932, p. 17, being chapter 10,

known as the dollar and half tax law. Section 1, of said act provides: "That the total of all taxes whether fixed by the state board of tax commissioners or by statute from which any revenue shall accrue or be paid to the state treasury for any purpose or for the use of any fund kept or received by the treasurer of state, for the year 1932, upon which taxes are payable in the year 1933 and for each year thereafter shall not exceed the sum of fifteen cents upon each one hundred dollars of taxable property within said state."

Section 2 of said act provided: "The term municipal corporation, as used herein, shall include counties, townships, school townships, . . . school districts, sanitary districts, park districts and all taxing units within the state."

Section 3 of said act provided: "That the total of all tax levies on property within any municipal corporation for all municipal corporations for which the property therein is taxable shall not exceed the total rate of one dollar and fifty cents on each one hundred dollars of taxable property therein, except as hereinafter provided."

Section 4 of said act provided for a County Board of Tax Adjustment, organization, powers and duties and had an emergency clause relative to the \$1.50 rate.

Section 3 of the Act of 1932 was amended by the Acts of 1933, chapter 97, p. 673, to read as follows: "The total of all tax levies on property within any municipal corporation for all municipal corporations for which the property therein is taxable, except as provided in section 4 of this act, shall not exceed the following total rates:

"In territory outside of the corporate limits of incorporated cities and towns, the total tax rate for all purposes, including the state levy referred to in section 1 of this act, shall not exceed one dollar on each one hundred dollars of taxable property therein.

"In territory inside of the corporate limits of incorporated cities and towns, the total tax rate for all purposes, including the state levy referred to in section 1 of this act, shall not exceed one dollar and fifty cents on each one hundred dollars of taxable property therein."

Section 4 of the Act of 1932 was amended by the Acts of 1933, p. 674, as to the qualifications of the members of the tax adjustment board, and in some other particulars but especially as to declaring an emergency as provided in clause five of said section, and being on page 676 of said act. It provides for the board of tax adjustment to meet at the office of the county auditor on the third Monday of September of each year and from day to day thereafter as their business requires. "At the first meeting the county auditor shall lay before said board the budgets adopted and tax levies fixed by the proper officers or bodies of each municipal corporation of such county for the ensuing year, and such board shall have the right to require the attendance, or the furnishing of such information pertaining to said budgets and levies, by the officials of the various municipal corporations in the county as said board may deem necessary. . . . It shall be

the duty of such board to examine and, if it deems such action necessary, revise, change or reduce, but not increase, any tax levy and any corresponding items of the budget on which such tax levies are based and apportion the total of all said levies so that the total levy on property within any municipal corporation for all municipal corporations for which the property therein is taxable, including the state levy referred to in section 1, shall not exceed the applicable total rate as provided in section 3 hereof: *Provided, however,* That if an emergency exists as to any municipal corporation, such board, by a vote of at least five members thereof, shall have the power to fix such tax levy for such municipal corporation as is necessary to meet such emergency though the total rate fixed as the result thereof shall exceed the applicable total rate as provided in section 3 of this act: *Provided, further,* if an emergency exists and shall be so declared by the county board of tax adjustment, such board shall set out of record their reasons for declaring such emergency, and shall state of record the nature of the emergency for which any such increased levy is made."

Clause 6 of section 4, as amended by the Acts of 1933, p. 677, provides that: "The county board of tax adjustment shall have no authority under this act to reduce specific tax levies made by the local officers for the purpose of providing funds for the payment of obligations of the several municipal corporations incurred prior to August 8, 1932, or funding or refunding obligations of such municipal corporations heretofore or hereafter authorized or issued for the purpose of procuring funds to pay obligations incurred prior to August 8, 1932, or any judgment against such municipal corporation or obligations issued to refund the same, below the amount required to meet such obligations and the interest thereon at the times and in the amounts required by the terms of such obligations. It shall be the duty of the proper governmental bodies and officers charged with the levying of taxes to levy taxes in an amount necessary, after applying all funds then available from other sources, to pay the principal and interest of such obligations as the same become due."

3, 4. It is seen from the foregoing sections of the statute and the acts of the Legislature, that it is the duty of the county to take care of and provide for the poor in the county asylum and other charitable institutions in which the poor and indigent are placed, and the duty and obligation is upon the township trustee to take care of the poor within the township. It is also clearly shown that it is the duty of the county council to appropriate, and the board of commissioners of each county to advance to the township trustee the money necessary for the relief, and burial of the poor in each township, which money shall be accounted for and repaid to the county treasury.

5. While it is the duty of the county to advance money to the township, it is a township liability to take care of its poor and not the obligation of the county. The money advanced by the county becomes a loan to the township and the township, under the provisions of the law, must reimburse the county for all advancements or loans made.

Section 5894, Burns 1926, provides: "Hereafter the board of county commissioners, or any authority, shall have no power whatever to make any allowance for voluntary service, or for things voluntarily furnished, and no power to pay, or cause the same to be paid for, out of the county treasury; *they shall have no power to allow, pay or cause to be paid any money out of the county treasury to or for the relief or support of any pauper or poor person* whatever, or liable to become such, if such person be at the time not an inmate of some county institution. They shall have no power to contract for services of any physician to attend upon any poor of the county other than inmates of the county institution;" (Our italics.)

It is clearly seen from the above section of the statute that the Legislature has expressly provided that it is not a county duty or obligation to take care of the poor other than those in a county institution; and, it not being a duty or obligation of the county, it necessarily, without question, becomes a duty and obligation of the township alone to take care of its poor.

An Act of 1859, p. 220, Sec. 12043, Burns 1926, provides: "Each and every township that now is or may hereafter be organized in any county in this state is hereby declared a body politic and corporate, by the name and style of '..... township of county,' according to the name of the township and county in which the same may be organized, and, by such name, may contract and be contracted with, sue and be sued in any court having competent jurisdiction."

6. It is the duty of the township to take care of its poor. The township has the power through its proper officer to make contracts for the relief of the poor, and having entered into a valid and legal contract for this purpose the obligation becomes binding upon the township and must be paid by the township. And if the township, by its proper officers, refuses to comply with a valid and legal contract it may be sued and judgment rendered against it. In the instant case the obligation entered into between the township and persons who furnished food products and other things for the relief of its poor was a valid and legal obligation and those furnished the goods are entitled to be paid for the same. If not paid, they are entitled to sue and recover a judgment against the township for the amount due them.

7. It is insisted by the appellant that the matter of township poor relief is a duty imposed jointly on the county and the township and that the township cannot be sued alone for debts created in giving relief to the poor and that the county is also liable. This contention can not prevail for the reasons heretofore given. The relief of the poor is an obligation of the township and not that of the county.

8. It is also insisted that the statutes provide a method of granting relief and the allowance of claims and that such statutory method is a condition precedent to making the township and county liable. It is insisted that under the statutes it is necessary that the claims be filed in the county auditor's office and passed upon and allowed by the board of county commissioners. It must be conceded that for the past several years this has been the practice generally

pursued. However, after a very careful examination of all the statutes we find none which prescribes this procedure. On the other hand we find the township trustee of each township is the overseer of the poor and that it is his duty to look and provide for their relief. And that the county council shall appropriate and the board of commissioners of each county shall advance to the township trustee the money necessary for the relief of the poor in each township. Throughout all the statutes there is the provision for the county to advance the money necessary, but in no statute is it provided that it is necessary for the holders of township orders to present them to the board of county commissioners for them to pass upon and allow. Under the statutes and acts as we find them it is the duty of the county council to appropriate and the board of commissioners to advance to the township trustee the money necessary for the relief of the poor in his township. It is not the duty of the board of commissioners to pass upon and allow each claim held by those who have given help to the poor on a proper order of the trustee, nor the duty of the county auditor to draw his warrants therefor. It is the duty, however, for the board of commissioners to advance the necessary money to the trustee for the relief of the poor of the township upon a proper showing made by him, and it is then up to him to make the payments to the proper persons. As stated above we concede that this has not been the method pursued for many years. It may not be the best method and, if not, then it is up to the Legislature to prescribe a procedure. It is not for this court to enter the fields of legislation. We are only concerned with the law as we find it.

9. It may be suggested that section 12266, Burns 1926, points to a different construction than we have given the different acts. That section provides: "Whenever an overseer of the poor shall have given aid, other than burial, medical relief or assistance to children under the compulsory education law, to any poor person or family to the amount of fifteen dollars, it shall be unlawful for him to furnish any further aid to such poor person or family until he shall have presented a statement of the case to the board of county commissioners, with a schedule stating the following facts, viz.:" And section 12267, Burns 1926, provides: "On the inspection of said schedule the county commissioners may authorize the overseer to extend further aid to such person or persons. . . ." There is nothing inconsistent with this provision of the statute and the construction we have placed upon the other statutes and acts. Under section 12266, *supra*, it becomes the duty of the trustee at his peril not to furnish more than fifteen dollars to any one person or family before the case is presented to the board of commissioners for its approval. This duty is upon the trustee and not upon the one who furnishes the aid in whatever form it might be. If the trustee violates this section and pays out more than allowed without presenting the same to the board of commissioners, then the liability for the excess is upon him, and not upon the one who in good faith and without knowledge, furnishes more than fifteen dollars on a proper order of the trustee.

10. If there is not sufficient money in the general fund of the county to advance the necessary amount of money to the township, then in that event the

board of commissioners is authorized, and it becomes its duty, to borrow money to pay poor relief claims incurred and filed with such respective boards of commissioners. And the board of commissioners is authorized by ordinance of the county council, duly called into session, in the manner now provided by law, to issue the bonds of the county extending over a period of not to exceed ten years, as other bonds are issued, and such bonds shall constitute a county obligation. And under the law, if necessary, it becomes the imperative duty of the county council to authorize the issuance of the bonds and the board of commissioners to issue them in order to raise money for the relief of the poor of the township.

II. The tax law of 1932, and as amended in 1933, commonly known as the dollar and half tax law, limits the rate to one dollar in territory outside of the corporate limits of incorporated cities and towns and in territory inside of the corporate limits of incorporated cities and towns to one dollar and fifty cents. However, in case of an emergency existing in any municipal corporation, the board of tax adjustment, by a vote of at least five members thereof, shall have the power to fix such tax levy for such municipal corporation as is necessary to meet such emergency, though the total rate fixed as the result thereof shall exceed the total rate of one dollar, or one dollar and a half as the situation of the taxable property may be. And in case of an emergency in any municipal corporation, such as for the relief of the poor, the board of tax adjustment not only has the power, but it becomes its imperative duty to fix such tax levy for such municipal corporation as is necessary to meet such emergency. This duty cannot be side-stepped or evaded on the theory that it would raise the tax levy above the one dollar or one dollar and half rate. The legislative body purposely made the exception to take care of emergencies that might exist in any municipal corporation.

The question may be hereafter raised that the Act of 1933, chapter 203, page 981, is invalid as not being in compliance with the constitutional provision that where a section of an act is amended it shall be set forth at full length therein. As all the acts we are considering are more or less related and interlocking with one another, we consider that we should pass upon the validity of the above act.

The title of chapter 203 proceeds upon the theory of an amendatory act. The language is: "An Act to amend section 1 and the title of an act entitled 'An act authorizing the borrowing of money by boards of commissioners . . . , approved March 6, 1931, approved August 16, 1932. . . .'"

Section 21 of article 4 of the Constitution of Indiana, provides: "No act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length."

Section 19 of article 4, provides: "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such an act shall be void only as to so much thereof as shall not be expressed in the title."

Under the above sections the act cannot be held to be an amendment. How-

ever, when we read section 19, article 4, we find that the "subject of the legislation must be expressed in the title," and "if any subject shall be embraced in an act which shall not be expressed in this title, such act shall be void only as to so much thereof as shall not be expressed in the title."

In the case of *Milligan v. Arnold* (1912), 50 Ind. App. 559, 98 N.E. 822, the court said: "In this state a constitutional provision (Const. Art. 4, Sec. 19) requires the subject matter of a legislative enactment to be expressed in the title, and a failure in this respect will invalidate the part not expressed. . . . But we know of no rule of law or case, holding a legislative enactment invalid on the ground that its title is broader than the subject of the legislation."

If the title covers a general subject, matters germane to such subject may be included in the act although not specifically mentioned in the title. *People v. Monroe* (1932), 349 Ill. 270, 182 N.E. 439, 85 A. L. R. 605, *Marion, etc., Traction Co. v. Simmons* (1913), 180 Ind. 289, 102 N.E. 132. In the above case the question was concerning the towns and cities Act of 1905, and the title was, "An Act concerning municipal corporations," and was held not violative of the constitution.

In construing the title, "An Act concerning highways" (Acts 1905, p. 521), which is general, against an attack that the title could not include streets of a town or city, this court held that the title to an act need not specify each particular or detail within the scope of the act; but that such title is sufficient if all details of the act might be reasonably inferred. *Smith v. Board* (1910), 173 Ind. 364, 90 N.E. 881.

"It is no objection that a title to an act is too broad, general, or that it comprehends more than is legislated upon by the act itself." *Lindsay v. State* (1924), 195 Ind. 333, 145 N.E. 438.

12, 13. If we consider the act alone, it does not purport to be an amendment, but an original act. The subject of the act is the borrowing of money by boards of commissioners in anticipation of claims to be incurred and filed by trustee for relief of the poor.

So much of the title as relative here is as follows: "An Act . . . providing for the borrowing of money . . . boards of commissioners in anticipation of claims to be incurred and filed by trustees of townships for relief of the poor, and declaring an emergency."

The act embraces but one subject and we think it is expressed in the title of the act and that part of the title purporting to amend chapter 46 of the Acts of 1932 should be regarded as surplusage, and the act should be sustained as original legislation.

"Statutes are to be construed as to sustain their constitutionality rather than to place upon them a construction which would render them invalid." *Cox v. Timm* (1914), 182 Ind. 7, 15, 150 N.E. 479.

14. Having held that chapter 203, Acts 1933, p. 981, is valid, the question is then presented—Is the act in conflict with chapter 237, Acts 1933, p. 1085? These two acts became effective at the same time.

Section 3, of chapter 237, provides for a limitation of the tax rule to one dollar in territory outside of the corporate limits and incorporated cities and towns and one dollar and fifty cents in territory inside of the corporate limits of incorporated cities and towns.

Section 4 of said act, provides: "That if an emergency exists as to any municipal corporation, such board, by a vote of at least five members thereof, shall have the power to fix such tax levy for such municipal corporation as is necessary to meet such emergency though the total rate fixed as the result thereof shall exceed the applicable total rate as provided in section 3 of this act."

Section 4 of chapter 237 also provides: "The county board of tax adjustment shall have no authority under this act to reduce specific tax levies made by the local officers for the purpose of providing funds for the payment of obligations of the several municipal corporations incurred prior to August 8, 1932, or funding or refunding obligations of such municipal corporations heretofore or hereafter authorized or issued for the purpose of procuring funds to pay obligations incurred prior to August 8, 1932, or any judgment against such municipal corporation or obligations issued to refund the same, below the amount required to meet such obligations and the interest thereon at the times and in the amounts required by the terms of such obligations. It shall be the duty of the proper governmental bodies and officers charged with the levying of taxes to levy taxes in the amount necessary, after applying all funds then available from other sources, to pay the principal and interest of such obligations as the same become due."

In construing the emergency clause of Section 4, *supra*, and the clause just set out above, must we not construe them to take care of any obligations for the relief of poor? If, as provided, an emergency exist for the relief of the poor (and there may be other emergencies) then it becomes the imperative duty for the adjustment board to fix such a tax levy as will take care of the emergency notwithstanding the rate may go above the limitation as fixed in section 3, and there is nothing in the clause last above set out to prevent this. In the latter clause it specifically says that: "The board shall have no authority to reduce specific tax levies made for the purpose of providing funds for the paying of obligations of the several municipal corporations incurred prior to August 8, 1932, of funding or refunding obligations heretofore or hereafter authorized or issued for the purpose of procuring funds to pay obligations incurred prior to August 8, 1932, or any judgment against such municipal corporation." It is to be noted that the provision for the payment of any judgment includes judgments that may be taken after August 8, 1932, as well as those taken before. If a judgment taken after August 8, 1932, upon a claim for poor relief, is an obligation to be considered and paid, then does it not logically follow that a claim for poor relief, not reduced to judgment, but incurred after August 8, 1932, is an obligation to be taken care of by funds provided to pay the same? In our opinion it does. And it becomes the duty of the proper governmental bodies and officers charged with the levying of taxes, to levy taxes in an amount necessary, after

applying all funds then available from other sources, to pay the principal and interest of such obligations as the same become due.

We do not believe that chapter 203 and chapter 237 of the Acts of 1933 are in conflict with each other when we consider the well known rules of statutory construction. They should be so construed, if possible to avoid conflict. And statutes bearing on the same subject should be construed together.

15. Statutes enacted at the same session of the legislature are to be construed in *pari materia*, so as to give effect to each if possible. *State v. Rackley* (1829), 2 Blackford 249; *Indiana Cent. Canal Co. v. State* (1876), 53 Ind. 575; *Shea v. City of Muncie* (1897), 149 Ind. 14, 46 N.E. 138.

16. In the construction of statutes where the meaning is doubtful and uncertain, the courts may look to the situation and circumstances under which the same were enacted; other statutes bearing upon the same subject, whether passed before or after, and whether in force or not, as well as the history and general condition of the country. *Stout v. Board of Com'rs.* (1886), 107 Ind. 343, 8 N.E. 222; *May v. Hoover* (1887), 112 Ind. 455, 14 N.E. 472; *Hunt v. Railway Co.* (1887), 112 Ind. 69, 13 N.E. 263; *Parvin v. Wimberg* (1892), 130 Ind. 561, 30 N.E. 790, 15 L.R.A. 775, 30 Am. St. Rep. 254; *State v. Myers* (1896) 146 Ind. 36, 44 N.E. 801; *Given v. State* (1903), 160 Ind. 552, 66 N.E. 750.

17. We judicially know the situation and circumstances and the general condition of the state when these acts were passed. We know that the question of poor relief then, as well as now, was uppermost in the minds of all, and that the legislative body was intent on passing laws to take care of this situation. And, knowing this, these acts should be so construed, if possible, as harmonious and not in conflict so that the evident purpose of the legislature may be fulfilled.

18. It is insisted that the Township Commissariat Act of 1932, page 191, and as amended by the Acts of 1933, page 1007, is unconstitutional. Section 1 of said act provides: "That except as hereinafter otherwise provided, with the approval of the board of county commissioners, the advisory board of any township located in any county in which county there is located any city of the second class, or located in any county having a population of not less than 53,500 nor more than 58,000 according to the last preceding United States census, or any township in which there is located a city of the third class, not being a county seat, and having a population of more than thirty thousand, according to the last preceding United States census, may establish and operate a township commissariat in the manner prescribed in this act."

Section 2 provides that the township commissariat shall be under the control and direction of the township advisory board, and that the said board may employ assistants to help operate said commissariat and establish branches in the township.

Section 3 was amended by the Acts of 1933, page 1007. Said section makes provisions as to the purchasing of supplies and making contracts and giving notice thereof.

Section 4 provides for the issuing of requisitions to the persons asking for relief.

Section 5 provides that: "All supplies or commodities purchased or contracted for, as herein provided, shall be paid, in the first instance, by the board of commissioners of the county, on order of the advisory board, out of the funds hereinafter provided for that purpose, and the amount so paid on behalf of any such township in such county shall be repaid to such county as herein provided."

Section 6 provides that: "For the purpose of procuring the necessary funds with which to operate and maintain such commissariat and to procure, purchase and distribute the supplies and commodities herein contemplated, the board of commissioners of the county in which such township is situated may advance a sufficient amount of money, from time to time, out of the general fund of the county; or, if no money is available in such fund, the board of commissioners is hereby authorized to borrow a sufficient amount of money for the purpose herein contemplated. Such loans shall not be in excess of the reasonable amount necessary for such purpose, and shall be authorized by ordinance of the county council, duly called into session, in the manner provided by law. Any loan so made may be made for a period of not less than one nor more than ten years, shall be evidenced by the notes, warrants or bonds of such county, executed by the board of commissioners. . . . Such notes, warrants or bonds shall be sold by the auditor of such county in the same manner as is provided by law for the sale of the bonds of counties."

Section 7 was amended by the Acts of 1933, page 1008, and provides: "That the township trustee and the advisory board of such township in any such county shall, at the next and successive annual meetings of such advisory board after the making of any such loan, levy a tax sufficient to reimburse the county for so much of said loan, principal and interest, as then may become due and payable by the county according to the terms, tenor, and provisions of issuance of bonds referred to in section 6 of this act; and in the event that said officers fail to levy sufficient tax so to pay such maturing bonds and interest as herein provided, then and in such event the auditor of the county in which is such township shall levy the same or increase such tax in such amount as will reimburse the county for the amounts as herein provided."

It is the contention of appellant that the Commissariat Act is unconstitutional being in violation of section 22 of article 4 of the Indiana Constitution forbidding local and special laws regulating county and township business, and likewise in violation of section 23 of article 4 of the Constitution requiring that all laws shall be general and of uniform operations throughout the state.

Section 22 of article 4 of the Constitution of Indiana provides: "The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: . . . Regulating county and township business."

Section 23 of article 4 of the Constitution of Indiana provides as follows: "In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state."

Can it be said that the Commissariat Act violates section 22 and 23 of article 4 of the Constitution of Indiana? We do not believe so.

The act in question provides that the advisory board of any township in any county in which county there is located any city of the second class, or in any county having a population not less than 53,500 nor more than 58,000 according to the last preceding United States census, or any township in which there is located a city of the third class, not being a county seat and having a population of more than 30,000, according to the last census, may establish and operate a township commissariat for the care and relief of the poor of the township.

In the case of *Kraus v. Lehman* (1908), 170 Ind. 408, 415, 83 N.E. 714, 84 N.E. 769, 15 Ann. Cas. 849, the court said: "That all reasonable presumptions must be indulged in favor of the validity of an act of the Legislature, and it is only when its invalidity appears so clearly and palpable as to leave no room for a reasonable doubt that it violates some provision of the Constitution that a court will refuse to affirm or sustain its validity." In the above case the court also said: "Art. 4, Sec. 23 emphasizes what the provisions of section 22 were intended to bring about in respect to laws enacted by the Legislature upon cases or subjects therein enumerated, for said section 23 declares that 'in all cases enumerated in the preceding section, *and in all other cases where a general law can be made applicable*, all laws shall be general, and of uniform operation throughout the state.' " (Our italics.)

In the case of *Smith v. Board* (1910), 173 Ind. 364, 90 N.E. 881, we find the question of the constitutionality of an act relative to the improvement and building of a highway, questioned as being in violation of section 22 of article 4. The act provided that: "Whenever a petition signed by fifty or more freeholders and voters of any township in any county in this state, includes any incorporated town or city in such township having a population of less than thirty thousand inhabitants, praying . . . the board of county commissioners shall proceed under such petition and carry out the provisions of the act." The court in this case held that such a law did not violate section 22 of article 4, and that: "A law that applies in the same way to all parts of the state, where conditions upon which it operates are similar, is a general, and not a local or special law. . . .

"The exclusion from its operation of all incorporated towns and cities of thirty thousand and over, and the inclusion of all such towns and cities of less than thirty thousand, is not a capricious, unreasonable, and unconstitutional classification." It is further held that population is a reasonable basis for classification and is not confined to highway purposes. In 1871 (Acts 1871, p. 20) a common school system was provided for cities of over thirty thousand inhabitants. In 1899 (Acts 1899, p. 432) boards of school commissioners in cities of over thirty thousand inhabitants were authorized to levy a library tax, and in 1899 (Acts 1899, p. 125) mayors of cities of thirty thousand, or more, inhabitants were empowered to veto ordinances.

In the case of *Bumb v. City of Evansville* (1907), 168 Ind. 272, 80 N.E. 625, the act in question related to cities having a population of more than 50,000

and less than 100,000. The appellant contended the same violated section 22 of article 4 of the Constitution. The court, in quoting from other cases said: "Any law which applies generally to a particular class of cases is not a local or special law. . . . The Constitution does not require that the operation of a law shall be uniform, other than its operation shall be the same in all parts of the state under the same circumstances."

The Commissariat Act does not violate section 22, article 4 since it is not a local or special law regulating county and township business. It provides the means for townships to handle the poor relief situation in the townships in the most economical manner, and was passed in order to meet the poor relief emergency. It applies to all townships in any county in which county there is located any city of the second class, or in any county having a population not less than 53,500 nor more than 58,000, or any county in which there is located a city of the third class, not being a county seat and having a population of more than 30,000.

It has been held that in enacting a law upon any subject enumerated in section 22, the Legislature may resort to classification and thereby make a general law within the meaning or contemplations of that section. *Kraus v. Lehman*, *supra*.

There must, however, be a real reason or necessity for the classification and must inhere in the subject matter and must be natural and not artificial. *Kraus v. Lehman*, *supra*.

Many different situations arise in administering the poor relief law in different parts of the state. There are many small townships in different parts of the state where the population is small and composed mostly of farmers and where they are not affected by the poor relief situation. On the other hand there are other communities with a different situation where it would be most economical in relieving the poor by a township commissariat. And other communities where it would be impracticable to dispense the poor relief through a commissariat.

As said in the case of *School City of Rushville v. Hayes* (1904), 162 Ind. 193, 70 N.E. 134: "The political needs of the larger community may be of a different nature, and the forms and methods by which its affairs must be administered may be more extensive, complicated, and elaborate than those required in the municipality of a smaller population." And in the case of *Strange v. Board* (1910), 173 Ind. 640, 91 N.E. 242, the court said: "If there is a reason for the classification, then, in the very nature of the case, the existence of the power implies the right to fix it at some place, or at some number, or at some population, and the right to fix the classification rests with the legislative body."

It is our opinion that the Township Commissariat Act is valid and does not violate either section 22 or section 23 of article 4 of the Constitution of Indiana.

The demurrer to each paragraph of the complaint was properly overruled. Judgment affirmed.

III. LIST OF JUDICIAL DECISIONS DEALING WITH POOR LAW PROBLEMS

1. THE SUPREME COURT

- Bartholomew County Commissioners v. Boynton and Another*, 30 Indiana 359 (1868). 70, 229¹
- Bartholomew County Commissioners v. Wright*, 22 Indiana 187 (1864). 69, 224
- Blythe v. State*, 4 Indiana 525 (1853). 74, 204
- Board of Commissioners of Darke County Ohio v. Overman, Sheriff of Randolph County*, 157 Indiana 141 (1901). 292
- Britton v. The State, ex rel. Rowe*, 115 Indiana 55 (1888).
- Burger v. Rice*, 3 Indiana 125 (1851). 79
- Burton v. The State*, 75 Indiana 477 (1881).
- Carroll County Commissioners v. Wilson*, 1 Indiana 478 (1847).
- Connor v. Franklin County Commissioners*, 57 Indiana 15 (1877). 239
- Cooper v. Howard County Commissioners*, 64 Indiana 520 (1878). 71, 243
- Decatur County Commissioners v. Wheeldon*, 15 Indiana 147 (1860). 67, 216
- Demar v. Simpson*, 4 Indiana 131 (1838). 77
- Faulkenburgh v. Jones*, 5 Indiana; 296 (1854). 74, 209
- Fayette County Commissioners v. Chitwood and Another*, 8 Indiana 504 (1857). 66, 213
- Fountain County Commissioners v. Wood*, 35 Indiana 70 (1871). 76, 233
- Fuller and Fuller Company v. Mehl et al*, 134 Indiana 60 (1892). 77
- Gardner et al v. Knox County Commissioners*, 161 Indiana 149 (1903). 65, 295
- Gaston v. Marion County Commissioners*, 3 Indiana 497 (1852). 202
- Gordon v. Dearborn County Commissioners*, 44 Indiana 475; also 52 Indiana 322 (1876). 237
- Hanna v. Putnam County Commissioners*, 29 Indiana 170 (1867). 227
- Harrison County Commissioners v. Hunter*, 161 Indiana 478 (1903). 297
- Harrison v. Stanton et al*, 146 Indiana 366 (1896).
- Hendryx v. State*, 130 Indiana 265 (1891). 77
- Hoey v. McCarthy*, 124 Indiana 464 (1890). 77
- Hollen v. Lake County Commissioners*, 55 Indiana 194 (1876).
- Hood by his next Friend, Hood v. Pearsen*, 67 Indiana 368 (1879). 245
- Howard County Commissioners v. Jennings*, 104 Indiana 108 (1885). 262
- Howard County Commissioners v. Pollard*, 153 Indiana 371 (1899).
- Huntington County Commissioners v. Boyle*, 9 Indiana 296 (1857). 215
- Jefferson County Commissioners v. Rogers*, 17 Indiana 341 (1861). 68, 218

¹ These numbers refer to the page references in the text (italic for discussion within the chapters, roman for the case itself).

- Kerlin v. Reynolds et al.*, 142 Indiana 460 (1895).
Kerr v. State on the Relation of Wray, 35 Indiana 288 (1871).
Knox County Commissioners v. Jones, 7 Indiana 3 (1855). 21, 61
Miller v. The State, 149 Indiana 607 (1897).
Montgomery County Commissioners v. Bromley, 108 Indiana 158 (1886). 62
Montgomery County Commissioners v. Courtney, 105 Indiana 311 (1885). 76, 267
Montgomery County Commissioners v. Ristine, 124 Indiana 242 (1890). 59, 278
Morgan County Commissioners v. Holman and Another, 34 Indiana 256 (1870).
Morgan County Commissioners v. Johnson and Another, 29 Indiana 25 (1867).
Morgan County Commissioners v. Seaton, 90 Indiana 158 (1883). 71, 254
Morgan County v. Seaton, 122 Indiana 521 (1889). 275
Morgan ex Parte, 122 Indiana 428 (1889).
Mullen v. The Decatur County Commissioners, 9 Indiana 502 (1857). 67
Newcomer et al. v. Jefferson Township, 161 Indiana 1 (1913). 299
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Orange County Commissioners v. Ritter et al., 90 Indiana 362 (1883). 255
Owens v. Frager, 118 Indiana 532 (1889).
Platter v. Board of Commissioners of Elkhart County, 103 Indiana 360 (1885).
Posey County Commissioners v. Harlem et al., 108 Indiana 164 (1886). 63, 271
Posey County Commissioners v. Templeton, 116 Indiana 369 (1883). 275
Pulaski County v. Shields, 130 Indiana 6 (1891).
Reiniche v. Allen County Commissioners, 20 Indiana 242 (1863). 61, 69, 219
Robbins v. Morgan County Commissioners, 91 Indiana 537 (1883). 250
Shelby County Council et al. v. The State ex rel. The School City of Shelbyville, 155 Indiana 216 (1900). 63
Southern Railway Company et al. v. Limback, 172 Indiana 89 (1908).
Stanton v. The State on the Relation of Prather, Overseer, 6 Indiana 82 (1841). 78
State ex rel. Childers v. Delana and Others, 37 Indiana 249 (1871).
State ex rel. Darke County Infirmary v. Overman, 157 Indiana 141 (1901). 292
State v. Neff, 58 Indiana 516 (1877). 62, 241
State ex. rel. Morris v. Wallace, 41 Indiana 445 (1872).
Stout v. State, 90 Indiana 1 (1883).
Summers v. Board of Commissioners of Davies County, 103 Indiana 262 (1886).
 133, 266
Switzerland County Commissioners v. Hildebrand, 1 Indiana 555 (1849). 59, 201
Tilford, Auditor v. Douglass, Trustee, 41 Indiana 580 (1873).
Vigo County Commissioners v. Fisher, 86 Indiana 139 (1882). 249
Warren County Commissioners v. Saunders, 16 Indiana 405 (1861).
Washburn v. Board of Commissioners of Shelby County, 104 Indiana 321 (1885).
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Wayne Township v. Brown, 205 Indiana 437 (1933). 65, 302
Webb, Auditor v. Baird, 6 Indiana 13 (1854). 75, 207
Wright, Administrator v. McLarinan, 92 Indiana 103 (1883).

2. THE APPELLATE COURT

- Board et al v. Cole*, 9 Indiana Appellate 474 (1893). 73
Board v. Henson, 29 Indiana Appellate 189 (1902).
Board v. Falk, 29 Indiana Appellate 683 (1902).
Cicero Township v. Falconberry et al, 14 Indiana Appellate 237 (1895).
City of Greenfield v. Black, 42 Illinois Appellate 645-649 (1908).
Hachnel v. Seidendoff, 63 Indiana Appellate 218 (1916).
Lake Erie Railroad Company v. Griswold, 72 Indiana Appellate 265 (1902).
Perry County Commissioners v. Lomax, 5 Indiana Appellate 567 (1893). 133, 288
Pittsburgh Cincinnati, Chicago and St. Louis Railway v. Jacobs, 8 Illinois Appellate 556 (1893).
Sessenguth v. Bowme, 58 Indiana Appellate 97 (1914).
Tipton v. Brown, 4 Indiana Appellate 288, Clinton Circuit Court (1891). 283
Township Trustee v. Galloway, 17 Indiana Appellate 689 (1897).
Woodruff v. Board of Noble Company, 10 Indiana Appellate 1796 (1894).

IV. SELECTED OPINIONS OF THE ATTORNEY-GENERAL

THE TOWNSHIP TRUSTEE OF THE TOWNSHIP OF WHICH THE DECEASED WAS A RESIDENT PRIOR TO HIS REMOVAL TO THE HOME MAY DEFRAY THE BURIAL EXPENSES; IN CASE OF HIS REFUSAL THEY SHOULD BE DEFRAYED BY THE HOME, AND TREATED AS CURRENT EXPENSES (UNDATED):¹

Gen. James R. Carnahan, President, etc.:

DEAR SIR—I have your inquiry of the 30th ult., in regard to the burial of indigent persons at your Home. I have been almost constantly out of the city since its receipt, so that I have not heretofore had an opportunity to answer it.

I do not believe that the county from which the deceased poor come to your Home can be compelled to pay the funeral expenses where the veteran dies and is buried at the Home. The statute on that subject, Sections 8359 to 8362, inclusive, imposes the duty of investigating and deciding whether it is a proper case for payment out of the funds, upon the Township Trustee. That means, I take it, the Trustee of the township of which the deceased was a resident at the time of his death. That determination is dependent upon the Township Trustee and all persons in interest are bound by his determination, and no one can make that determination but he. If the county should see fit to re-imburse, I think it would be proper, but I do not believe it can be compelled to do so, except in the manner pointed out by the statute and that is through the Trustee.

The question of residence would have to be settled in each particular instance. By going to the Soldiers' Home a man does not necessarily lose his residence in his former home, and yet if he purposes to remain permanently, I am inclined to the opinion that he would become a resident not only for voting, but for other purposes of the township in which the Soldiers' Home is located, in which case the Trustee of that township would be the one to investigate and determine.

In most instances, however, I presume that the inmates would still treat their former residence as their continuing residence and in that case the application should be made to the Trustee in the first instance, and upon his decision the Board of County Commissioners would be compelled to refund to him the money that he had paid.

In the absence of action by the Township Trustee, inasmuch as the person dying must be buried, I presume that the expense connected with his interment might, until other provision for it was made by the General Assembly, be treated as part of the current expenses of the institution under Section 17.

¹ William A. Ketcham, *Biennial Report of Attorney-General*, 1895-96, pp. 70-71.

POOR—CARE OF BY TOWNSHIP TRUSTEE²

March 11, 1899.

Hon. A. W. Buller, Secretary Board of State Charities:

DEAR SIR—You ask if section 33 of the county reform bill of 1899 repeals the act of March 11, 1895 (acts of 1895, p. 241).

The act of 1895 provided for the keeping of a record by the township overseer of the poor of township charities. Section 33 of the act of 1899, in so far as it relates to poor relief, simply provides, as to the duties of county commissioners, that "they shall have no power to allow, pay, or cause to be paid, any money out of the county treasury to or for the relief or support of any pauper or poor person whatever, or liable to become such, if such person be at the time not an inmate of some county institution." There is no possible theory on which such a section could be held as repealing a law requiring the township overseer of the poor to keep a record of his expenditures for public charity; and it is, therefore, my opinion that this section of the act of 1899 does not repeal the act of 1895 referred to.

The evident purpose of the passage quoted from section 33 of the act of 1899 was to repeal R.S. 1894, section 8149, providing for discretionary allowances to the poor by the county board, and to make in each township but one disbursing officer of public charity.

Section 33, referred to, does not provide that no warrants can be drawn on the county treasury for the care of the poor. It simply provides that the county commissioners have no authority to allow, pay, or cause to be paid, any money from the county treasury for the poor who are not inmates of county institutions.

An act was passed by the general assembly of 1899 providing the means by which outdoor relief could be given by the township overseer (H.A.204). This act was passed early in the session, and recognizes, by section 6, that section 8149, R.S. 1894 was, at the time of its passage, still in force. The section of the revised statutes was, however, repealed, as I have above stated, by the reform act subsequently passed.

The theory of the county reform act of 1899 is that the whole charge of the poor, outside of public institutions, shall be borne by the townships, and this theory is evidenced by the provisions of the act concerning township business, approved February 27, 1899, which, by section 3, provides that the trustee shall furnish to the advisory board, a statement or estimate, which, among other things, shall show the poor expenditures of the previous year and the tax; and it also provides, by section 4, that the trustee shall present a detailed statement of his estimated expenditures, showing "the condition of pauperism in the township, including names of such persons as have received public aid since the taking effect of this act, and since the last annual meeting of the board, with the respective amounts received by each person."

² *Biennial Report of the Attorney General of Indiana (1899-1900)*, p. 66.

In my opinion, the act concerning county business of March 3, 1899, simply prohibits any allowances to be made by the county commissioners directly to the poor for outdoor relief, but the authority of the township overseer of the poor, heretofore existing, to administer outdoor relief, continues, except as limited and qualified by house act 204.

No warrants can be drawn on the county treasury for poor relief in the name of the pauper; but warrants may be drawn and moneys advanced to the township overseer for the care of the poor, as heretofore, subject to the limitation of the act of 1899 above referred to.

The act of March 3, 1899, concerning county business, did not include any emergency clause, and consequently it will take effect when the other acts of this assembly do, upon the proclamation of the governor declaring the acts to be in force.

PRISONERS—PAROLE OF AND CARE³

May 2, 1899.

Hon. Amos W. Butler, Secretary Board of State Charities:

DEAR SIR—In your communication of the 24th ultimo you ask, when prisoners have been transferred from the reformatory to the state prison, and when such prisoners have been regularly paroled or discharged, whose duty it is to supply such paroled or discharged prisoners with clothing and transportation.

Sections 1, 2 and 3 of the acts of the general assembly of 1899 (Acts of 1899, p. 16) clearly make it the duty of the superintendent or warden of the reformatory or state prison from which such prisoner is paroled or discharged to furnish the clothing and transportation provided for in said act. In the case stated, in my opinion, it would be the duty of the warden of the state prison to furnish the clothing and transportation, unless the prisoner was an inmate of the reformatory at the time of his discharge or parole.

In the same communication, you also ask whether or not it is a duty imposed by law upon boards of county commissioners to submit to the board of state charities for suggestion and criticism plans and specifications of new jails and infirmaries, before the adoption of the same by the board of commissioners.

Section 3194, R.S. 1894, being section 2 of the act of the general assembly of 1889, creating the board of state charities, provides, among other duties and powers, that all plans for new jails and infirmaries shall, before the adoption of the same by the county authorities, be submitted to said board for suggestion and criticism.

The provisions of section 3194, R.S. 1894, in so far as they refer to county officials, are clearly duties imposed by the legislature upon such county officials.

³ *Ibid.*, p. 68.

POOR—PHYSICIANS FOR⁴

May 6, 1899.

Hon. A. W. Butler, Secretary Board of State Charities:

DEAR SIR—Answering your inquiry of the 17th as to whether or not boards of county commissioners have power to employ township doctors for the poor of the various townships, will say that:

Section 33 of the act of 1899 (Acts of 1899, p. 364) prohibits the board of county commissioners from making any such contracts. The care of the poor is placed in the hands of the township trustees, and they alone have the right to make contracts for medical attention in their respective townships.

POOR—CARE OF BY TRUSTEES⁵

May 13, 1899.

A. W. Butler, Secretary Board of State Charities:

DEAR SIR—I am in receipt of your letter of the 10th, in which you ask an opinion upon the following questions:

1. Are the boards of county commissioners of Indiana still required to advance to the township trustees, as overseers of the poor, the necessary money for outdoor relief?
2. Is the county treasury to be reimbursed as heretofore, by levy against the township for such expenditure for the poor of such township? I answer your questions as follows:

I.

For the remainder of the year 1899, there will be no change in the method of providing poor relief from that heretofore in force.

Section 49 of the county reform law provides that the provisions of that law, requiring appropriations to be made by the county council and prohibiting warrants upon the county treasury being drawn, or money paid thereon, except pursuant to the appropriations made by the county council, will not be in force until January 1, 1900. Said section further provides that in the meantime the present boards of county commissioners and officers shall continue to exercise all the powers that will be vested in said county council after they shall have been duly qualified.

The money to be expended for the support of the poor, after January 1 next, shall be appropriated by the county council, at its annual meeting on the first Tuesday after the first Monday in September.

Prior thereto, to wit, before Thursday following the first Monday in August, as provided for in section 16 of that law, the board of county commissioners shall prepare an estimate of all moneys to be drawn by said board, and of all expenditures made by it or pursuant to its order during the year.

⁴ *Ibid.*, p. 69.

⁵ *Ibid.*, p. 66.

Clause 16 of section 9, covers the estimates of expenditures for the poor. The last sentence of section 22 will prohibit the drawing of any money for the poor out of the county treasury after January 1st next, unless an appropriation shall be made therefore by the county council, at its annual meeting in September.

It is, therefore, the duty of such county council to make an appropriation for the support of the poor, pursuant to existing laws.

The prohibition in section 33, against paying any money out of the county treasury for the relief or support of any pauper or poor person, will not be effective until January 1, 1900, after which time the township trustees, as now, will be required to take care of the poor, and the money to be expended therefor shall be appropriated by the county council, and advanced out of the county treasury.

The act of February 24, 1899, governing the administration of the relief to the poor, must be construed with the county reform law, and prior laws. The township trustee is still the overseer of the poor, and administers all outdoor relief. He may, subject to the provisions of the poor laws, give orders upon the county treasury for the relief of the poor.

The vouchers provided for in the county reform law, and in the poor relief acts, must be signed by the person receiving the money from the treasury, on such orders. These include merchants, grocery keepers, druggists, and others, who furnish directly to the poor clothing, medicine or food, as ordered by such overseer of the poor.

It is the duty of the board of county commissioners of Indiana, during the remainder of the year 1899, to pay such orders as are properly made on the treasury by such overseers of the poor; all to be charged to the respective townships as provided by law.

II.

Under the present poor laws of the state of Indiana, the county advances, out of its treasury, to the respective townships, the money necessarily required for the support of the poor. The respective townships must reimburse to the county treasury for such expenditure. This reimbursement is made each next succeeding year; that is to say, the money that is paid this year out of the county treasury, for the support of the poor of this township, will be repaid to the county by the taxes collected next year from the taxpayers of this township, so that the poor relief fund is advanced by the counties a year before it is collected from the townships. This method must still be carried out.

Section 4 of the township reform law provides that it shall be the duty of the township trustee, in his report to the advisory board of the township, to report the condition of pauperism in his township.

Clause 7 of section 3 of said township reform law provides that the trustee shall, thirty days before the annual meeting of the advisory board of the township, report the amount of poor expenditures for the preceding year, and the amount of the tax levy on the \$100 necessary to pay the same.

Section 1 of said law, provides that the advisory board shall, upon the approval of such estimates and reports, fix a tax levy upon the property and polls in their respective townships and that levy shall constitute and be deemed an appropriation for the specific purposes for which such estimates are fixed. This is the method by which the township will reimburse the county treasury for the money advanced out of the county treasury for the support of the township's poor.

This year it so happens that all of the township advisory boards and all the county councils throughout the state, will meet on the 5th day of September in annual session.

POOR—CARE OF UNDER THE COUNTY REFORM LAW⁶

May 13, 1899.

Hon. A. W. Butler, Secretary Board of State Charities:

SIR—I am in receipt of your letter of the 10th inst., in which you ask three questions:

"First. Does the law relating to county business prohibit county commissioners from making any of the provisions for the county's orphan, dependent, neglected and abandoned children, provided for in the act of February 23, 1897?

"Second. Does the law relating to county business prohibit the board of county commissioners from paying for the support, or other expenses of such children, under contract made with any association or individual, under authority of that law?

"Third. Does the new law annul the prohibition as to keeping children in poor asylums?" I answer your questions in their order.

First. All these laws must be construed together. They must also be construed liberally in favor of the remedies sought to be effected thereby. The laws relating to the support of the poor must be upheld, as a matter of public policy, unless there is a positive prohibitive statute against the same.

The act of February 23, 1897, provides that where the county does not own and manage an orphan asylum of its own, it may contract with other orphan asylums or institutions to take care of its orphan poor, at the rate of 25 cents per day. In counties, therefore, where contracts are thus made with orphan asylums, those asylums become such quasi county institutions as will bring them within the terms of the county reform law.

That the act of 1897 is still in force is determined by the general appropriation act of 1899, which was passed after both the township and county reform bills had become laws.

Item 18 of that act makes a specific appropriation for the purpose of carrying into effect the dependent children act of 1897.

⁶ *Ibid.*, p. 70.

There is nothing in the county reform bill that repeals the orphan children law of 1897.

Section 49 of the county reform act provides that none of the provisions respecting the drawing of warrants, or making appropriations out of the county treasury, pursuant to said act, shall be effective until January 1, 1900. Therefore, the provisions already made for the support and maintenance of these institutions could not in any way be affected until the first of January, 1900.

Section 19, clause 1, provides that on the Thursday following the first Monday in August, the county commissioners shall prepare an estimate of county expenditures; the first clause of which covers institutions maintained or supported in whole or in part out of the county treasury.

Clause 12 of said section requires such estimates to include the support of inmates of state benevolent institutions, or other benevolent or penal institutions.

It shall be the duty of the county council, at its annual meeting, upon proper estimates, to fix the levy necessary to meet these expenses.

Second. The answer to the first question answers your second. The county reform law does not prohibit the board of county commissioners from paying for the support, or other expenses of any dependent children, under contract made with any association or individual. The county commissioners will have such authority, and it is their duty to so pay such expenses until January 1, 1900. In the meantime the county council will meet and make allowances to cover those expenses that shall accrue after January 1, 1900.

Third. The new county reform law does not annul the prohibition against keeping children in poor asylums.

POOR—SUPPLIES FOR CHILDREN OF⁷

December 2, 1898.

Hon. David M. Geeting, Superintendent of Public Instruction:

SIR—You ask whose duty it is, under section 7 of the compulsory education act of 1897 (acts of '97, p. 248) to furnish temporary aid to poor children, for the purpose of supplying them with necessary books and clothing, with which to attend school.

In answer I have to say, that the language of the statute is so plain as not to require construction. It is the last act upon the subject, and, if in conflict with any acts previously passed, its language under the ordinary rules of statutory construction, must control.

In case the residence of any child or children, whose parents or guardians are too poor to furnish necessary books and clothing, is in an incorporated town or city, the board of school trustees, or, in the city of Indianapolis, commissioners,

⁷ *Ibid.*, p. 80.

must furnish the child with the necessary books and clothing. If, however, the residence is not within an incorporated town or city, such books and clothing must be furnished by the school trustees of the township. However, this aid is, by the express language of the statute, only temporary, and moneys so advanced by the school trustees, or commissioners, must be allowed and paid upon their certificate by the board of county commissioners, and is not to be taken, except for the time being, out of the school funds.

SCHOOLS—COMPULSORY EDUCATION LAW—AID UNDER⁸

December 31, 1898.

Hon. D. M. Geeting, Superintendent of Public Instruction:

DEAR SIR—In answer to your question as to whether, under section 7 of the compulsory education act of 1897 (acts of 1897, p. 248) temporary aid can be furnished to poor children oftener than once in the school year:

I have to say that the purpose and intent of the statute is that such assistance must be furnished whenever it can be shown to the satisfaction of the school trustee or trustees that it is necessary, and whether such necessity should exist only once during the year or oftener, and that whenever such temporary assistance shall have been rendered by the school trustee or trustees, the funds so advanced shall be reimbursed by the county commissioners, as provided in that law.

POOR—TRAVELING EXPENSES OF STATE AGENT, INCURRED
IN TRANSFERRING CHILD FROM PLACE TO PLACE IN
SEARCH OF HOME FOR SUCH CHILD⁹

August 24, 1899.

Hon. A. W. Buller, Secretary Board of State Charities:

DEAR SIR—Replying to your communication of the 14th, in which you state the case of Della Sargent, would say that under section 3186, Burns' R.S. 1897, it is unquestionably the duty of the board of commissioners to pay the traveling expenses incurred in transferring a child, placed in the charge of the state agent by such board, from place to place, while endeavoring to find a home for such child.

Whether or not the county would be liable for the maintenance of a child placed in an orphans' home by such agent, without some agreement from such board of commissioners, is doubtful. The law is not clear on this proposition and would seem to imply that the board is only bound to pay the traveling expenses; but certainly the board could ratify any contract made by such agent when acting for such board, in the care of any dependent child of such county.

⁸ *Ibid.*, p. 81.

⁹ *Ibid.*, p. 74.

SOLDIERS' WIVES—BURIAL OF BY TRUSTEE—
POOR CHILDREN¹⁰

January 9, 1900.

Hon. A. W. Butler, Secretary Board of State Charities:

DEAR SIR—You ask—

I.

"Does the law now provide for the burial of soldiers' wives, as well as soldiers?"

The act of March 6, 1889, made no provision for the burial of the wives or widows of former soldiers. March 3, 1899, the act was passed (acts of 1899, p. 397), amending section 1 of the act of March 6, 1889, and this amendment makes no provision authorizing the burial of the wives or widows of ex-soldiers.

March 4, 1899, an act was passed amending sections 1, 2 and 3 of the act of March 6, 1889 (acts of 1899, p. 406). This amendment of the first section is void, under the well settled rule that when a section has been once amended it is dead and can not be further amended, it being only possible to amend the amended section. (*Feibleman v. State*, 98 Ind. 516.)

The act for the burial of ex-soldiers must therefore be read as if it consisted of the first section on page 397 of the acts of 1899 and of the second and third sections on page 406 of the acts of 1899. The second section makes no provision for the burial of wives or widows, but only provides for certain inquiries to be made by the township trustee with regard to the circumstances of the wife or widow of a deceased soldier, and as no direct authority is contained in sections one or two of the act as amended, to pay the expenses of the burial of wife or widow, such expenses can not be paid. Section 3 does not authorize the burial of a wife or widow, but simply provides that expenses incurred in such burial, which must be presumed to mean the burial of an ex-soldier, shall be allowed by the county commissioner and paid out of the county treasury, as other legal charges against the county are allowed and paid.

This money is clearly intended to be paid out of the county funds and is not included in the sum for which the county is to be reimbursed by the overseer of the poor on account of money advanced for poor relief.

The whole purport of the act for burial of deceased soldiers is that in the language of the supreme court:

"The maintenance of a volunteer who becomes indigent from a disability incurred in the service is no more a charity than a pension is a benevolence. Both are considerations for services rendered the government, and both are implied from long usage of the government, and rightfully operate as an inducement to the volunteer to enter the military service." (*State v. Board*, 54 N.E., p. 812.)

The evident meaning of the act is that the ex-soldier is not to be considered or treated in any respect as a pauper, and this the act expressly states. The money must, therefore, be paid by the county out of county funds.

¹⁰ *Ibid.*, p. 76.

II.

"Since the county reform law prohibits the county commissioners from employing a physician for persons who are not inmates of a public institution, whose duty will it be to employ a physician to attend to the outdoor poor?"

"Shall the money expended for such service be included in the amount for which levy is made against the township to reimburse the county treasury?"

Section 33 of the act in relation to county business (acts 1899, p. 354) provides that the board of county commissioners—

"Shall have no power to contract for services of any physician to attend upon the poor of the county other than inmates of the county institutions."

This still permits township trustees to employ physicians to administer temporary medical attention to the sick poor in cases of emergency, under the proviso to R.S. 1894, section 7851, to the effect that—

"This section shall not be construed as to prevent the overseers of the poor, or any one of them, in townships not otherwise provided for, from employing such medical services as paupers within his or their jurisdiction may require."

It also permits medical assistance to be rendered under R.S. 1894, section 8165.

Under the amendment of 1897 to R.S. 1894, section 8175 (acts 1897, p. 230), the townships must reimburse the county for the amount allowed during the preceding year "for medical attendance of the poor of each township of the county."

III.

"Shall the cost of the aid furnished to enable destitute children to attend school, be included in this last mentioned amount?"

Under section 6 of the act concerning the education of children, act of March 6, 1899 (acts 1899, p. 550), it is provided that—

"If any parent, guardian or custodian of any child or children is too poor to furnish such child or children with the necessary books and clothing, with which to attend school, then the school trustee of the township, or the board of school trustees or commissioners of the city, or incorporated town where such parent, guardian or custodian resides, shall furnish temporary aid for such purpose, to such child or children, which aid shall be allowed and paid upon the certificate of said officers by the board of county commissioners of said county. Such township trustee or board of school trustees or commissioners, shall at once make out and file with the auditor of the county a full list of the children so aided, and the board of county commissioners, at their next regular meeting, shall investigate such cases and make such provisions for such child or children as will enable them to continue in school as intended by this act."

The act referred to became the law March 6, 1899. The county reform act was approved March 3, 1899, while the act limiting the amount of aid to be given, other than for burial, to any poor person or family, to fifteen dollars in any quarter, was approved February 24, 1899.

It is, therefore, my opinion that the cost of the aid furnished to enable destitute children to attend school should not be included within the fifteen dollar limit, but should be reimbursed by the township to the county.

IV.

"What is allowed per day for services of the township trustee as overseer of the poor?"

This question has been three times decided by the supreme court, which holds that the section of the law limiting the pay of the trustee as overseer of the poor to one dollar per day (R.S. 1894, section 8161), has been repealed by implication, and that a trustee is entitled to the same pay for services rendered as overseer of the poor that he is for other services as trustee. (*Board v. Fischer*, 86 Ind., p. 142; *Board v. Brumley*, 108 Ind. 158; *Kerlin, v. Reynolds*, 142 Ind. 468.)

It must be remembered, however, that a township trustee is not entitled to pay from any source greater than two dollars per day, and that he can not get his pay as overseer of the poor in addition to his pay as trustee.

In view of the provision that township trustees shall receive for their services the compensation now fixed by law and provided that where a per diem is allowed by law the number of days' service for which the trustee is allowed shall be fixed and allowed by the advisory board at their annual meeting, and this shall constitute the entire compensation of such trustee for all the duties of his office. (Acts 1899, p. 157.)

The trustees' pay for services as overseers of the poor, while paid by the county, should be considered and included in the allowance fixed by the township advisory board.

QUARANTINE—WHO FURNISHES SUPPLIES TO QUARANTINED PERSONS?¹¹

April 7, 1906.

Hon. Amos W. Butler, Secretary Board of State Charities:

DEAR SIR—In your communication of April 4, 1906, you ask whether the township trustee as overseer of the poor, or the local board of health, provides household supplies, medicines, medical assistance, etc., to families quarantined under the act of 1903, in cases where such families are not paupers, but in which the wage-earner, upon whose labor the family is dependent, is prevented by the quarantine from earning a livelihood, and his family has thereby been rendered temporarily indigent.

The act fixing the duties of the township trustee as overseer of the poor states (Burns' 1901, section 8147):

"The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a charge, and shall see that they are properly relieved and taken care of in the manner required by law.

¹¹ *Ibid.* (1904-6), p. 214.

He shall, in cases of necessity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions; and shall also see that such medicines as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished."

The quarantine act of 1903, page 165, of the Acts of 1903, section 11, provides:

"The expenses *incident to disease prevention* shall be paid by the cities and towns *in which the work may become necessary*, and when without the corporation of cities and towns said expenses shall be borne by the county. If at any time the authorities of any county, city or town fail, neglect or refuse to enforce the statutes and the rules of state board of health for the restriction of dangerous, communicable diseases, when the state board of health, if in its opinion it becomes necessary, shall take charge and enforce the law and the rules, and all expenses shall be paid by the county, city or town in which such enforcement becomes necessary. Sheriffs, constables, marshals, police and all peace officers shall, if called upon by health officers, aid in the enforcement of this act."

I understand no question is raised in your communication regarding the liability of the party whose family is supported by the public funds, to repay the municipality for the support so furnished; but that your inquiry is solely as to whether the public aid in such cases shall be furnished by the township trustee, or whether it must be supplied by the town, city or county board of health.

I am of the opinion that in the cases to which you refer, ordinary household supplies—food, fuel, medicines and medical attendance for sickness other than that quarantined against—are to be furnished by the township trustee; but that medicines, medical attendance, food and supplies furnished specially for the afflicted inmate of the family, and all other supplies which are not ordinarily used by households in good health, but which are rendered necessary in the given case by the contagious disease and the quarantine, are to be furnished by the town, city or county board of health, according to the locality in which the quarantine exists, for the following reasons:

First. The act of 1901, above quoted, expressly gives the township trustee oversight and charge of "*all poor persons in his township so long as they remain a charge.*" The act of 1903 is not clearly inconsistent with this large bestowal of authority, and an amendment or repeal of the earlier statute by implication is not to be presumed. A person may properly be considered "poor" when he is disabled by sudden calamity from supporting his family, though he is not a pauper in the usual sense of that term.

Second. The township trustee has means at his disposal for securing supplies furnished gratuitously, which the boards of health do not possess. He is required to co-operate with local relief and charitable societies (Acts 1901, p. 326, sections 13 and 14), and to solicit aid from the relatives of the poor (Acts 1901, p. 325, sections 7 and 10).

By interpreting the law as casting the duty of provision upon the trustee, the

public funds may be, in part, exonerated from the burden otherwise imposed exclusively upon them.

Third. The support of the indigent is, at common law and under the statutes, deemed a matter of local, rather than of general concern. The subject of the prevention of contagious disease is one in which the whole state is interested. Hence it is proper that the local officer (the township trustee) shall furnish those supplies, medicines, etc., which are intended to relieve the ordinary necessities of the family, while those charged with the enforcement of the general health laws and regulations of the state (the local, or, if need be, the state board of health), shall make the extraordinary provision rendered necessary by the contagious disease.

Fourth. The act of 1903, above quoted, empowers the state board of health to enforce the law in a given locality, and "all expenses shall be paid by the county, city or town in which such enforcement becomes necessary." It is not to be supposed the legislature intended that upon neglect or refusal by the local health authorities to enforce the quarantine laws, the state board should proceed to buy groceries, household supplies, clothing, fuel and pay house rent for the family which is rendered dependent by isolation.

Fifth. The act of 1903, page 163, provides for the destruction of articles likely to communicate disease, and that the board of health shall pay the owner out of general funds of the municipality. The same act, pages 163 and 164, provides for removal of a patient afflicted with a contagious and dangerous disease to a pest-house, and states that the board of health shall pay, out of municipal funds, all expenses of removal, nursing, medical attendance, beds, bedding and food for such afflicted person and his nurses.

It is evident from these two sections that the expenses which the board of health is required to pay are those rendered necessary by the disease, and by the quarantine. This is made clear by the language of section 11, above quoted, which states: "The expenses incident to disease prevention shall be paid by the cities and towns in which the work may become necessary, and when without the corporation of cities and towns said expenses shall be borne by the county." This means *the expenses created by work performed in enforcing the law*. If the items of expense would probably have existed independently of the quarantine, then such are not "expenses incident to disease prevention."

Where the head of a family is prevented from earning a livelihood because of a quarantine, his expenses for groceries, fuel, clothing, rent, ordinary medicines, etc., are precisely the same as if there was no contagious disease in his home, and no quarantine in force. Hence, these charges can not be deemed "expenses incident to disease prevention," any more than the taxes due from such householder could be so considered. They *accompany* the isolation, but are not occasioned by or incident to it.

If the wage-earner, before his quarantine, supported an indigent relative in another town or in a different portion of the same town, it could not be con-

tended that the board of health should furnish support to such a dependent; nor, if the wage-earner himself is afflicted with a contagious disease and removed to a pest-house, could his family claim support from the board of health.

In both instances, they become proper charges on the township trustee. The rule also holds where the wage-earner and those dependent upon him occupy the same house.

I am, therefore, of the opinion, that for ordinary household expenses, the isolated family should look for aid to the township trustee.

DEPENDENT CHILDREN—TRUSTEE NOT REQUIRED TO
PROVIDE EDUCATION FOR NONRESIDENT DEPEND-
ENT CHILDREN NOT LEGALLY TRANSFERRED¹²

November 26, 1906.

Honorable Fassett A. Cotton, Superintendent of Public Instruction, Indianapolis, Indiana:

DEAR SIR—I am in receipt of your communication of November 15, 1906, in which you state that there is in this state a small charitable home which receives dependent children from different sections of the state and assumes their care and maintenance; that these children are not sent to the home by any truant officer, juvenile court, trustee or other legally authorized officer, but are collected from various localities by a representative of the home; that in some instances these children are orphans or half orphans, but in the case of others one parent is living, or both; that the legal settlement of the children is often a question of great doubt, and those in charge of the home have no system by which the fact regarding such settlement can be learned, and make no effort to ascertain the same; that they are insisting the township trustee must provide education for these dependent children.

Upon this statement of facts you ask:

(1) Whether such an institution has the right to compel the trustee of the township where such institution is located to educate these children; and

(2) Whether such township trustee can compel the townships in other parts of the state from which the children come to pay the transfer fee for tuition.

The determination of this question depends upon the proper construction of the statute found on page 15 of the Acts of 1903.

The title to said act reads:

"An act regulating the transfer of dependent children in orphans' homes and other custodial institutions for dependent children from one school corporation to another, providing for their education, authorizing appeals, the settlement of disputed claims, and declaring an emergency."

The first section thereof reads in part as follows:

"Be it enacted by the general assembly of the state of Indiana, That dependent children in orphans' homes or custodial institutions for dependent children

¹² *Ibid.*, p. 382.

in this state shall be educated by the township trustee or school board of the corporation in which the custodial institution or orphans' home is located. That a transfer certificate shall be issued by the trustee or school board where such child has a legal settlement, for each dependent child in such custodial institution or orphans' home, and sent to the proper school officer or officers of the school corporation where said custodial institution or orphans' home is located. . . ."

Section 2 reads as follows:

"The school corporation in which such child has settlement shall pay out of the special school fund of said corporation to the school corporation in which said institution is located, as tuition for said child, an amount equal to the annual per capita cost of education, in the corporation to which said child is transferred, or such a part of it as the child or children are actually school residents of the corporation to which they were transferred."

From a careful reading of the entire act it is apparent that the legislature intended the duty of education should rest in the first instance upon the school corporation in which the custodial home or orphans' asylum was located; but that the cost of education should fall upon the school corporation in which such child had a legal settlement and whose officers executed the transfer certificate provided for in section 1. The duty of the township trustee to provide education for the child was correlative with the transfer by the corporation in whose jurisdiction the child had a legal settlement. It was not intended that a private custodial institution should collect dependent children from all quarters of the state, establish them in a particular township and compel it to educate them without having procured transfers, according to the statute, from the school authorities in the locality where such children had a legal settlement.

My opinion, therefore, is that if the children mentioned in your communication have never been legally transferred to the school corporation in which the home is situated, those in charge of such custodial institution are in no position to demand education for these children from the trustee of such corporation.

QUARANTINE: WHO BEARS EXPENSES INCIDENT TO,
IF FAMILY IS ABLE TO PAY THE SAME
AND IF UNABLE TO PAY SAME¹³

August 9, 1915.

Secretary, Indiana State Board of Health, Indianapolis, Indiana.

DEAR SIR: I am in receipt of your letter of the 4th inst., asking me for an official opinion as to who should bear the expense incident to a quarantine, that is for medical attention, nurse hire, household expenses, laundry and other necessities.

In reply thereto, I will say that on June 28, 1915, an official opinion relative to this matter was given to the Auditor of State, which reads as follows:

¹³ *Ibid.* (1915-16), p. 898.

"I have your letter of June 25th, reading as follows:

"Will you be so kind as to give me your opinion on the following question?

'A city, because of infectious disease, quarantines a family that is financially able to bear the medical and household expense incident to such quarantine. Is the city liable for any of such expense, and, if so, to what extent? If a family is not able to bear the medical and household expense of such quarantine, to what extent is the city liable?'

"In reply I beg to say that in my opinion if the family is financially able to bear the medical and household expenses of this quarantine, to what extent is the city liable, I beg to state as follows: I am of the opinion that ordinary household supplies, such as food, fuel, medical attendance for sickness other than that quarantined against, ought to be furnished by the township trustee, but that the food and medicine furnished especially for the afflicted inmate of the house and all other supplies which are not ordinarily used by households in good health, but which are rendered necessary by reason of the quarantine, are to be furnished by the municipality. The reasons for this view are as follows:

"First. The law gives the township trustee the oversight and charge of all poor persons in his township, so long as they remain a charge. A person may properly be considered poor when he is disabled by sudden calamity from supporting his family, though he is not a pauper in the usual terms of that word.

"Second. The support of the poor is a matter of local, rather than general concern. The prevention of contagious disease also is one in which the whole State is interested. Hence, the township trustee should furnish the supplies which are intended to relieve the ordinary necessities of the family, while those charged with the enforcement of the health laws and regulations shall make the extraordinary assistance rendered necessary by the contagious disease.

"Third. While it is true that the Act of 1913 requires the health officer to enforce the quarantine and "all expenses shall be paid by the county, city or town in which such enforcements become necessary" and gives the State Board of Health certain powers if he shall neglect or refuse so to do, it is not supposed that this would require the State Board of Health to supply food, clothing or pay rent, etc.

"Fourth. The law also provides for the destruction of articles likely to communicate disease and provides that the board of health shall pay the owner out of the funds of the municipality, and that it shall pay the expenses of nursing, etc., for such afflicted person.

"It seems, therefore, that what the Legislature intended was that the only thing that the board of health should be required to pay would be the expenses rendered necessary by the disease and by the quarantine. You will notice that the law says that the expenses incident to disease prevention shall be paid by the city and town, etc. Now, I think that all this means is that expense created in enforcing the law shall be paid by the municipality.

"Where the head of a family is prevented from earning a livelihood because

of the quarantine, his expenses for groceries, fuel and clothing are precisely the same as if he were prevented for any other reason, hence these charges cannot be deemed expenses incident to disease prevention.

"I am, therefore, of the opinion that ordinary household expenses for a family that is quarantined should be paid by the township trustee, that is, of course, where the head of the household is not able to furnish them himself."

I am of the opinion that the foregoing letter answers the questions asked in your inquiry of the 4th inst. However, if there are any further questions not covered by the opinion to the Auditor of State, please formulate such questions and submit them in an additional letter.

POOR: FURNISH AID TO, BY TOWNSHIP TRUSTEE¹⁴

July 25, 1916.

Hon. Gilbert H. Hendren, State Board of Accounts of Indiana, Indianapolis, Indiana.

DEAR SIR: In answer to your letter of inquiry of the 20th inst., as follows: "Whenever an overseer of the poor (township trustee) shall have given aid, including medical relief (but not including burial or assistance to children under the compulsory educational law) to any poor person or family to the amount of the value of fifteen (\$15.00), is it lawful for him to furnish further aid to such poor person or family until he shall have presented a statement of the case to the board of county commissioners with a schedule stating the facts as required by statute, and the county commissioners authorize the overseer in writing to extend further aid to such person or persons?"

I would state that it is my opinion that a township trustee cannot give aid to any poor person or family exceeding the amount of the value of fifteen (\$15.00) dollars until he shall have presented to the board of county commissioners the statement provided for by Section 9751 Burns' R.S. 1914, and procured the authority of such board provided for by the following section. In calculating such amount, however, it is my further opinion the value of aid for burial or for medical relief (including medical attention and medicines), or for assistance to children under the compulsory educational law, is not to be included.

The wording of said Section 9751 is rather confusing, but I have concluded that such section must be construed as above stated. The phrase "medical relief" used therein cannot be construed in my opinion to mean medical relief to children under the compulsory education law. An examination of this latter law will show that there is no provision therein for furnishing medical attention to children coming within the purview of that law.

The case of *Newcomer et al. v. Jefferson Township, etc.*, 181 Ind. 1, involved the validity of a claim for One Hundred and Fifty (\$150.00) Dollars for the sur-

¹⁴ *Ibid.*, p. 547.

gical attention furnished an indigent boy, who was severely injured while riding on a freight train. Such surgical aid was furnished without the advice or consent of the township trustee. The Supreme Court held that the township was liable for such services. Now, if a township is liable for services of the kind and value of those furnished therein, I think it is reasonable to conclude that there would be a liability for medical services exceeding the value of Fifteen (\$15.00) Dollars where furnished at the request of the trustee. Section 9746 Burns' R.S. 1914, makes it mandatory upon the township trustee, in case of necessity, to promptly provide medical and surgical aid for all of the poor in his township, who are not provided for in public institutions.

COUNTY COMMISSIONERS: EXTENT OF AUTHORITY TO
CONTRACT WITH SUPERINTENDENT OF POOR ASYLUM¹⁵

August 2, 1916.

Hon. Amos W. Butler, Secretary, Indiana Board of State Charities, Indianapolis, Indiana.

DEAR SIR: I am in receipt of your inquiry of August 1st, which reads as follows:

"The following question has been raised: whether it is legal under the law of this State for a Board of County Commissioners to employ a superintendent of a poor asylum on a salary with the understanding that he is to supply and pay the help or furnish teams, other stock, vehicles, farm implements," etc.

In reply thereto please be advised that Section 9781, Burns' R.S. 1914, provides for the appointment by the Board of County Commissioners of a superintendent of county poor asylums and further provides for the fixing of his salary by such board. Section 9782, Burns' R.S. 1914, provides in part that, the Board of County Commissioners,

"With the advice and assistance of the superintendent of the county poor asylum shall regulate the number and fix the compensation of such matrons, assistants, nurses, attendants, farmers, seamstress, laborers, or other employes as may be needed for the care and control of the asylum."

Section 9785, Burns' R.S. 1914, provides the manner of obtaining supplies and equipment for such institutions, ending with the proviso,

"That the county council shall appropriate and the Board of County Commissioners shall allow for the necessary help and equipment of such poor asylum and for the necessary tools, implements, vehicles, utensils, live stock and everything necessary to equipment and maintenance of the farm."

Section 9787, Burns' R.S. 1914, provides, that,

"Whenever there shall be organized a county council in any county in this State, it is hereby declared that the authority conferred by this Act to pay officers and employes of such asylums and to pay for materials and supplies of

¹⁵ *Ibid.*, p. 872.

every sort therefor, shall be, and the same is hereby strictly limited to the extent of specific appropriations of money made in advance by such county council upon estimates furnished. No obligation or liability of any sort shall be incurred by any officer on behalf of said county unless the same shall fall within the appropriation specifically made for the purpose. Any undertakings or agreements contrary to the provisions of this section are declared to be absolutely void, and no action shall be maintained against the county thereon."

These sections indicate clearly to me that your question should be answered in the negative. As a further reason in support of such conclusion, Section 2423, Burns' R.S., 1914, prohibits any officer from being interested in all contracts for supplying help, teams, stock, vehicles, implements, and so on.

I am, therefore, of the opinion that it is illegal for a Board of County Commissioners to employ a superintendent of a poor asylum on a salary with the understanding that he is to supply and pay for help, equipment and so forth.

HOSPITALS: BOARD OF TRUSTEES OF HOSPITALS COMPETENT
TO PASS ON QUESTION OF WHETHER OR NOT PATIENTS
ARE PROPER SUBJECTS FOR CHARITY¹⁶

September 12, 1917.

State Board of Accounts,

GENTLEMEN: Responding to your inquiry of September 12th, will say that I have carefully examined the communication of J. A. Coons, chairman of the board of trustees of Witham Memorial Hospital, and the statutory enactment therein referred to.

It is my opinion that the act, which became a law without the signature of the governor, appearing in the acts of 1917, beginning at page 527, is a valid statutory enactment, and that under the provisions of section 18, the board of trustees have competent authority to determine whether or not patients presented at such hospital are proper subjects for charity, and that upon so finding, the township trustees would be required to abide thereby in the absence of any extraordinary circumstances, such as fraud, or other matters that could be corrected or brought into review in some collateral way.

QUARANTINE: WHO SHALL BEAR EXPENSES INCIDENT TO
IF FAMILY IS UNABLE TO PAY SAME¹⁷

September 25, 1917.

Hon. J. N. Hurty, Secretary State Board of Health.

DEAR SIR: I am in receipt of your letter of September 21, 1917, which is as follows:

"Dr. C. E. Nusbaum is town health officer of Bremen. A case of diphtheria is reported to him in the family of a working man, and in the law under penalty, he

¹⁶ *Opinions of the Attorney-General* (1916-20), p. 364.

¹⁷ *Ibid.*, p. 528.

is compelled to establish quarantine. This shuts the family up and stops the wages of the bread winner. Now the question is, who shall pay the necessary living expenses of this man and his family who find it impossible to support themselves because the law requires they be shut up in what is called quarantine. Of course they cannot be left to starve or to suffer. The quarantine is undoubtedly established for the benefit of the public, not for the benefit of the afflicted.

"In this instance the trustee says that he has a letter from the board of accounts telling him that he cannot pay for food and expenses of quarantine except for paupers. The town board of trustees also have information from the accounting board that they cannot pay for the support of the quarantined family under the law. We will thank you very much for an opinion telling who shall, under the law, pay the reasonable living expenses of the family who are not paupers when placed under quarantine."

It is provided by section 7609, Burns' R.S. 1914, being the amendment of 1909 to section 12 of the act of February 19, 1891;

"All expenses legally incurred for the work of protecting the public health outside the corporation of cities and towns shall be paid by the county treasurers out of the health appropriations made by county councils, upon warrants from county health commissioners, based upon sworn vouchers, said vouchers to have attached itemized bills for the amount for which they are drawn; and the expenses legally incurred for the protection of the public health inside the corporation of cities and towns shall be paid out of the treasuries of the cities and towns in which the work is done; and townships shall not be held for the payment of public health expenses, but the cost of the care of the paupers whether sick or well, shall be upon the townships."

Section 7608, Burns' R.S. 1914, authorizes boards of health and health commissioners "to establish quarantine and in connection therewith, to order what is reasonable and necessary for the prevention and suppression of disease, to close schools and churches and forbid public gatherings in order to prevent and stay epidemics, and in all reasonable and necessary ways to protect the public health."

Section 7614, of such statutes authorizes health authorities to quarantine infected houses, rooms of premises, and effectually to isolate the case or cases and the family, if necessary, in such manner and for such time as may be necessary to prevent transmission of the disease, etc.

Section 7619 of such statutes authorizes health officers to remove patients having dangerous communicable diseases to buildings set apart for their treatment, and the expenses of such removals are to be paid out of the general funds of the city, town or county, by the board having jurisdiction of such cases, and the statute further provides that "said board or said health officer shall also from time to time, as the same may be required, during said period of quarantine in said building, furnish the necessary food for the sustenance of said inmates . . . during said period of quarantine," etc.

It is to be noticed that the food and sustenance here provided for is authorized to be furnished only in cases where patients are removed to and treated in buildings or institutions, and that it is not provided that food and sustenance is to be so furnished in cases where patients are merely quarantined and treated in their own homes.

Section 7622 of such statutes provides:

"The expenses incident to disease prevention shall be paid by the cities and towns in which the work may become necessary and when such expenses shall be borne by the county. If at any time the authorities of any county, city or town fail, neglect or refuse to enforce the statutes and the rules of the state board of health for the restriction of dangerous, communicable diseases, then the state board of health, if in its opinion it becomes necessary, shall take charge and enforce the law and the rules, and all expenses shall be paid by the county, city or town in which such enforcement becomes necessary. Sheriffs, constables, marshals, police and all peace officers shall, if called upon by health officers, aid in enforcement of this act."

The provisions of these sections very clearly show that patients having dangerous, contagious and communicable diseases are to be put in quarantine either in their own homes or in separate buildings, and that the quarantines established are for the benefit of the public and for its protection rather than for the benefit of the quarantined persons; that where such patients are removed to and treated in separate buildings, under the supervision of health officers, sustenance is to be furnished to them, but where they are quarantined in their own homes, whether food and sustenance is to be furnished to them depends upon whether they are able to pay for same or are poor persons properly to be regarded as subjects to be helped by the township trustee.

It is my opinion that the expenses required to be paid by counties, cities and towns to protect the public health are only those rendered necessary by the disease and by the quarantine ordered to prevent its spreading so as to affect the public health. It is to be noted that the statutes provide that the expenses incident to disease prevention are to be paid by the city and town, etc., and it seems to me that its meaning is that the expense created in enforcing the law is the only expense required to be paid by the municipality.

I think when the head of a family is prevented from earning a living because of a quarantine, his expenses for groceries, fuel and clothing, etc., are just the same as if he was prevented from earning a living for any other reason; thence, such charges cannot be regarded expenses incident to disease prevention. In my opinion, if a family quarantined is financially able to bear household expenses incident to the quarantine, the municipality in which it resides is not liable for any part of such expense, and the city, town or county would only be liable for the expenses incurred in the precautions taken to prevent the spread of the disease. If a family is not able financially to bear the household expense of the quarantine, then I am of the opinion that such supplies, including medical

attendance for sickness, other than quarantined against, should be furnished by the township trustee, and that the food and medicines furnished for the afflicted inmate of the house and all other supplies not ordinarily used by households in good health, but which are made necessary by reason of the quarantine, should be furnished by the town, city or county in which the afflicted person resides. In other words, the law gives the township trustee charge of all poor persons in his township and, in my opinion, a person may properly be deemed poor when he is disabled by sudden calamity from supporting his family, and be entitled to receive help even though he is not a pauper within the usual meaning of that word.

In this opinion I am supported by an opinion given by my predecessor to the auditor of state, dated June 28, 1916, which opinion, among other things, says:

"The support of the poor is a matter of local rather than general concern. The prevention of contagious disease also is one in which the whole state is interested. Hence, the township trustee should furnish the supplies which are intended to relieve the ordinary necessities of the family, while those charged with the enforcement of the health laws and regulations shall make the extraordinary assistance rendered necessary by the contagious disease." (Report of Evan B. Stotsenburg, Attorney-General, 1915-16, p. 174.)

PAUPERS: EXPENSE OF TRANSFER TO BE PAID
FROM POOR FUND OF TOWNSHIP¹⁸

July 28, 1919.

Hon Jesse Eschbach, State Examiner.

DEAR SIR: I am in receipt of your letter of July 25, which is as follows:

"Section 9777, Burns' R.S. 1914, provides:

"The overseers of the poor shall from time to time, as persons may become permanent charges upon their respective townships, as paupers, have such persons removed to the county asylum."

"Please let us have your opinion as to whether or not the expense of transportation in removing such persons to the county asylum should be payable from the poor fund."

The statute provides that the overseers of the poor shall have such persons removed to the county asylum. This, of course, implies that the overseer is to have funds available with which to have such persons removed.

The township trustee as overseer of the poor has but one fund available, and that is the poor fund. It is, therefore, my opinion that the expense of transporting paupers to county asylums should be payable from the poor fund of the township.

¹⁸ *Ibid.*, p. 393.

TOWNSHIP TRUSTEE: NOT AUTHORIZED TO PAY INVESTIGATOR OF CLAIMS FOR POOR RELIEF FROM POOR FUND¹⁹

July 6, 1920.

Hon. Jesse Eschbach, State Examiner.

DEAR SIR: In your letter of July 3, you state that "in a few townships of the state of Indiana, township trustees are employing a special investigator to investigate claims for poor relief and report to said trustee upon the merits or demerits thereof."

Upon this statement you request my opinion "as to whether or not township trustees may pay the compensation and expenses of such investigators from the poor fund of the county and not from the appropriation for clerical hire."

Relieving the poor is a county matter, but the law designates township trustees overseers of the poor in their respective townships and they are required to perform all duties with reference to the poor that may be prescribed by law.

Section 9741, Burns' R.S. 1914. It is prescribed by statute that:

"The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a charge, and shall see that they are properly relieved and taken care of in the manner required by law. He shall, in cases of necessity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions; and shall also see that such medicines as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished.

Section 9746, Burns' R.S. 1914. It is also provided that:

"Whenever a claim for relief shall be made upon an overseer of the poor for the benefit of any persons or families of persons claiming to be poor and in distress, it shall be the duty of the overseer of the poor to carefully investigate the circumstances of such poor persons, so as to ascertain their legal settlement, their physical condition of sickness or health, their present and previous occupation, their ability and capacity for labor, their ages and the names and ages and the ability and capacity for labor of all members of their family, and if they are found to be in distress, the cause of their condition, if it can be ascertained. The overseer of the poor shall also inquire as to the family relationships of poor persons for whose benefit claims for relief are made, and, so far as possible, shall ascertain whether such persons have relatives able and willing to assist them."

Section 9747, Burns' R.S. 1914.

These and other statutes clearly show what duties a trustee, as overseer of the poor, is required to perform, and nowhere does the statutes authorize him to employ others to assist him in the performance of such duties.

The salary act of 1917 (Acts [1917], p. 602), classifying townships and providing compensation for trustees, according to the class of their respective townships, does provide that "in all townships in classes one to seven, inclusive, the

¹⁹ *Ibid.*, p. 406.

township advisory board shall annually appropriate for the employment of clerical assistance the amount of the estimates of the township trustee: Provided, That the amount so appropriated and allowed for clerical assistants shall not exceed in townships of the first class, five thousand dollars (\$5,000.00) a year." In other classes not exceeding annual sums named in the act.

These provisions aim to put at the disposal of the trustee funds available to employ clerical help in the conduct of his office.

Section 3 of the act of 1917 (Acts [1917], *supra*) provides:

"The several township officers shall appoint such deputies and assistants as may be necessary for the proper discharge of the duties imposed upon them. The township advisory board shall annually make appropriations for assistants in township offices affected by this act. The officials in charge are authorized to appoint and remove all deputies and assistants in their respective offices and shall be responsible for the official acts of such deputies and assistants. Any balance of such appropriations unexpended at the end of any fiscal year shall revert to the treasury of the township affected. Payments shall be made to assistants monthly upon vouchers duly certified to by the claimant and approved by the official in whose office he is employed."

If these provisions authorize a township trustee to appoint deputies and assistants, it does not provide any compensation for them except for clerical assistance, which in townships of the first class may not exceed \$5,000.00, and section 7 of said act provides that "The allowance provided herein for assistants for the several officers shall include all deputies, clerks, stenographers or assistants of whatsoever character."

It is clearly the duty of the trustee to investigate all claims for poor relief. Sections 9746-9748, Burns' R.S. 1914.

This being true he must perform such duty himself or have his assistants help him perform it and pay them out of the funds appropriated by section 4 of the act of 1917.

In the absence of a statute to that effect, it is my opinion that a township trustee cannot legally use any part of the poor fund advanced to him by the county to pay an assistant in aiding the trustee in the investigation of claims for relief of the poor.

HOSPITALS: SUPERINTENDENT AND MATRON CONTRACTING
BILL AGAINST TOWNSHIP POOR FUND WITHOUT
CONSULTING TOWNSHIP TRUSTEE²⁰

November 6, 1929.

Hon. Lawrence F. Orr, State Examiner, Indianapolis, Indiana.

DEAR SIR: I have before me your letter of October 29, 1929, as follows:

²⁰ *Ibid.* (1929-30), p. 359.

"The township trustee of Posey Township, Clay County appeals to this department in the matter of the enclosed statements and letters.

"State road 40 passes through Posey Township and almost daily accidents occur and the injured are rushed to the Brazil Hospital organized under the provisions of the 1917 statute, section 4377 Burns R.S. 1926 *et seq.*

"It will be noted by reference to section 4397 Burns R.S. 1926, that the hospital board has power to determine whether or not patients are subject for charity. In view of the provisions of other statutes, particularly section 4386 Burns R.S. 1926, would you say that the hospital superintendent and matron can contract a bill against the township poor fund in any sum without consulting the township trustee and receiving the approval of that official.

Replying, I call your attention to the fact that in 1901 the general assembly enacted a general act for the relief of the poor. (Acts of 1901, page 323.) In general this act constituted the township trustees of the several townships of the state *ex officio* the overseers of the poor within their respective townships. Generally speaking, the aid to be rendered by any trustee was limited to poor persons having a legal settlement within his township as defined by the statute. But to this limitation there were certain well defined exceptions.

First, it was provided that "he shall, in cases of necessity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions." (Burns Annotated Indiana Statutes 1926, section 12260.)

Second, it was made unlawful for any overseer of the poor to aid any person who is not a resident of the township where he is found otherwise than by some form of labor "*unless such person shall be sick, aged, injured or crippled and unable to travel,*" clearly leaving the inference that he may provide for the sick, aged, injured or crippled even though they are non-residents of his township. (Burns Annotated Indiana Statutes 1926, section 12277.)

In other words, the act provided two contingencies upon which an overseer of the poor would be authorized to furnish aid to non-resident poor, namely, first when the residence could not be determined and second when the person is found in the township sick, aged, injured or crippled and unable to travel. In the latter event the authority exists, apparently, in order to carry out the humane purposes of the act, even though the actual residence may be known and, in case of emergency, medical and surgical service may be rendered, even without notice to the overseer and the overseer is bound thereby. This was the case under the 1901 Act. *Newcomer, et al. v. Jefferson Tp., Tipton County*, 181 Ind. 1.

In 1917 the general assembly, for the purpose of providing for the establishment and maintenance of public county hospitals in an act entitled, "An Act to enable certain counties to establish and maintain public hospitals," provided by section 18 thereof as follows:

"The board of hospital trustees shall have power to determine whether or not patients presented at such public hospital for treatment or surgical operations

are subjects for charity, and when such fact is duly determined by said board, it is hereby made the duty of the superintendent or matron of said hospital to notify the township trustee of the township wherein said charity patient resided, or wherein he or she was found at the time of sickness or accident, that such person has been admitted to said hospital as a charity patient from said township, which said notice may be either written or printed. It is hereby made the duty of the township trustees, as overseers of the poor in their respective townships of the county where such hospital shall have been established, to pay to the treasurer of the hospital board the cost of the hospital care of such patient or patients as may have been admitted to such hospital from their respective townships. Provided, however, That the charge for hospital care for such patient or patients shall not exceed the actual cost of the same, said cost to be estimated by the matron or superintendent, or some one selected by them, which amount so due from said township trustee shall be paid by said trustee when the same shall be certified to by the matron or superintendent of such hospital." Burns Annotated Indiana Statutes 1926, Section 4397.

The above section, under well recognized canons of construction, must be construed with previous legislation in such a way as to allow all to stand, if possible, but in case of inconsistency, the later expression of the legislature must be held to govern. I am of the opinion that the above section presents no inconsistency as effects a repeal of any part of the 1901 Act, but as applied to situations where there is a county hospital organized under the 1917 Act and where the patient has been admitted to such hospital, the procedure set out in section 18 of the Act of 1917 applies. It is proper to call attention to the fact that the 1901 Act provides a method whereby overseers of the poor of a given township may have non-residents likely to become public charges removed to the place where such persons belong if it can be conveniently done, but the same section provides that "if he or she can not be so removed, such person shall be relieved by such overseer whenever such relief is needed." (Burns Annotated Indiana Statutes 1926, section 12279.)

Your question does not admit of a categorical answer. Of course the township trustee is entitled under the Act to prompt notice, but the final authority to determine whether the persons presented to such hospitals are subjects of charity lies with the board of hospital trustees. (Burns Annotated Indiana Statutes 1926, section 4397.) Payments, however, must be made out of proper funds duly appropriated upon proper certificate of the matron or superintendent of the hospital, as provided by the statute. The account of the hospital in the case submitted is not properly certified. This may be corrected.

As to the surgeon's bill for services rendered without notice to the trustee, the liability would depend upon whether there was an emergency which prevented notice as in the case of *Newcomer, et al. v. Jefferson Tp., Tipton County*, *supra*.

PAUPERS: NEGOTIATING TEMPORARY LOAN
FOR CLAIMS FOR POOR RELIEF²¹

October 6, 1930.

Hon. Lawrence F. Orr, State Examiner, Indianapolis, Indiana.

DEAR SIR: I have before me your letter of September 30, 1930, enclosing a letter from Mr. Arthur D. McKinley, county attorney of Delaware County, in which he states that Delaware County is facing a rather critical situation in regard to the claims for poor relief, an unusual amount of relief being required, and that due to the failure of the Lincoln Bank and Trust Company \$18,000.00 of the county funds are tied up until same can be collected through the bond. He states that the county council desires, in conjunction with the county commissioners, to negotiate a temporary loan to take care of this situation to provide money to advance to the townships for the payment of these claims and that the townships have included in their budget for 1931 a levy to reimburse the county as required by law. You request an opinion as to whether such a temporary loan may be legally made.

Burns Annotated Indiana Statutes of 1926, section 12258 makes it the duty of the county council to appropriate and the board of commissioners in each county to advance to the township trustees *the money necessary for the relief and burial of the poor in each township which is to be accounted for*, by the respective townships, and repaid to the county treasury as provided in section 12291 of Burns Annotated Indiana Statutes of 1926.

Burns Annotated Indiana Statutes of 1926, section 5893 provides that the county council shall have the exclusive power to authorize the borrowing of money for the county. Certain limitations upon such power are prescribed by the statute of which the following need to be noted in connection with the answer to your question. It is provided as follows:

"It shall be lawful to issue and sell bonds for any lawful corporate purpose, including the building of county bridges, and the repair of improved public highways of the county, except that *no bonds shall be issued or sold to pay for any current expenses of such county incurred after the passage of this act. Temporary loans may be authorized to meet current running expenses, to an amount not exceeding the revenue for the current year, and only as an anticipation of such revenue.*" (Our italics.)

I infer from your letter that the county has \$18,000.00 available except for the failure of the Lincoln Bank and Trust Company, in addition to which there will be the second installment of taxes soon to be received, so that the loan contemplated is not in excess of the revenue for the current year. Under such conditions, upon the proper steps first being taken, I see no reason preventing the making of a temporary loan for the purpose indicated. I do not think, however, that the loan should specifically be made payable out of the funds raised by the

²¹ *Ibid.*, p. 434.

township 1931 tax levy for poor relief. The obligation created by said loan is a county obligation and the township levy above is for the purpose of re-paying the advancements by the county for poor relief rather than the payment of the temporary loan.

POOR RELIEF: FILING OF CLAIMS BY SCHOOL CORPORATION APPROVED BY TOWNSHIP TRUSTEE AND ALLOWED BY COUNTY BOARD OF COMMISSIONERS OUT OF TOWNSHIP POOR FUND WITHOUT APPROPRIATION BY TOWNSHIP ADVISORY BOARD²²

August 27, 1931.

Hon. Lawrence F. Orr, State Examiner, Indianapolis, Indiana.

DEAR SIR: I have before me your request for an official opinion upon the following questions:

"Does chapter 74, Acts 1931, page 190, repeal section 6459, Burns Annotated Indiana Statutes 1926 (Acts [1921], p. 337, section 12)?

"Can claims filed by a school corporation, under provisions of section 6459, Burns Annotated Indiana Statutes 1926, be approved by the township trustee and allowed by the county board of commissioners out of the township poor fund, without appropriation by the township advisory board in those townships affected by chapter 74, Acts 1931?"

Chapter 74, Acts 1931, page 190, is an act providing for the appropriation and expenditure of funds for poor relief. Section 6459, Burns Annotated Indiana Statutes 1926, Acts (1921), page 337, section 12, is part of an act concerning compulsory education. By section 6459, *supra*, provision is made whereby parents, guardians or other persons having control or charge of children subject to the provisions of the act who do not have sufficient means to furnish such children with books, school supplies, and clothing necessary to the attendance of school, that the school corporation shall furnish *temporary aid for such purpose*. This section makes no provision for poor relief but is confined strictly to matters pertaining to compulsory education, that is, for temporary aid for such purposes as are provided therein. No provisions are contained in said section for providing food and other forms of relief as may be provided by the overseer of the poor. It is a special act providing books, school supplies and clothing for children in order that they might attend school as provided by the other provisions of such compulsory education act. It does not purport to furnish relief but only temporary aid for specific articles necessary to such act.

The act of 1931, *supra*, is general in character for the relief of the poor in cities of the classes named therein. It makes provisions for appropriation and expenditure of township funds for the relief of the poor. Webster's new international dictionary defines relief as—"aid in the form of money or necessities for indigent persons; supply of food and drink; sustenance."

²² *Ibid.* (1931-32), p. 289.

It is my opinion that when the legislature used the word "relief" in the 1931 act, it used the same in its ordinary meaning, that is,—necessities,—food and drink, sustenance, and that such act does not refer to anything in aid of the provisions of a special act.

I fail to find anything in section 6459, *supra*, in conflict with the act of 1931, *supra*, and section 6, of the last referred to act provides:

"This act shall be supplemental to existing laws, and only such laws, or parts of laws, as are in conflict herewith, are hereby repealed."

Should these statutes be construed as referring to the same subject, and the latter act embracing all that is included in the first, it would not repeal the former.

The appellate court in the case of *Greenbush Cemetery Assn. v. Van Natta*, 49 Ind. App. 192, on pages 199 and 200 said:

"It is a well-recognized principle, that a general statute on the same subject as a special act, without apt language showing such intention, will not be held to repeal or modify a former special or local act which is limited in its application. The special or local enactment remains in force after the passage of the general law on the same subject, unless they are irreconcilably inconsistent, although the general act would, taken strictly and but for the special law, include and control the subject of the special act." See also, *Walter v. State*, 105 Ind. 589, 592.

Therefore, since there is no direct repeal of section 6459, *supra*, in the repealing section of Acts of 1931, *supra*, such section is not repealed.

It is, therefore, my opinion, for reasons heretofore given, that your first question should be answered in the negative, and it is so answered.

Since my answer to the first question is in the negative, it of necessity causes my answer to your second question to be in the affirmative, and it is so answered.

POOR RELIEF: COMPELLING COUNTY COUNCIL TO
AUTHORIZE LOAN PROVIDED IN ACTS 1931,
PAGE 188²³

November 6, 1931.

Hon. Lawrence F. Orr, State Examiner, Indianapolis, Indiana.

DEAR SIR: I have before me your letter regarding the duties of the several county councils under section 1 of chapter 73 of the Acts of 1931. The specific question is whether the several county councils may be compelled by mandate to authorize the loan provided for in said section to provide money for poor relief.

The act referred to is entitled, "An act authorizing the borrowing of money by boards of commissioners of counties in Indiana to pay claims incurred and filed with such boards by township trustees for relief of the poor, which claims are in excess of appropriations and tax levies made therefor, and where such

²³ *Ibid.*, p. 297.

counties have no funds with which to pay said claims, and for the payment of claims incurred and filed by trustees of townships for relief of the poor where appropriations and tax levies for such purpose have been exhausted, or are in danger of being exhausted, and requiring townships to levy a tax to repay such counties for any such funds so borrowed for either or both of such purposes, and declaring an emergency." Acts of 1931, page 188.

Section 1, insofar as necessary for consideration in this connection, is as follows:

"That the boards of commissioners of any county of the state are hereby authorized to borrow money to pay claims incurred and filed with such respective boards of commissioners by trustees for relief of the poor of their respective townships, in excess of the amounts which can be reasonably advanced out of the general fund of the county for such purpose under the provisions of existing laws. *Such loans shall not be in excess of the reasonable amount necessary for such purposes, and shall be authorized by ordinance of the county council duly called into session in the manner now provided by law. . . .*" (Our italics.)

In addition to the above, section 4 of the general poor relief statute of 1901, being section 12258 Burns Annotated Indiana Statutes of 1926, provides in part that "*the county council shall appropriate and the board of commissioners in each county shall advance to the township trustees the money necessary for the relief and burial of the poor in each township, which shall be accounted for and repaid to the county treasury as hereinafter provided.*" (Our italics.)

The 1931 act referred to above clearly has for its purpose the providing of funds for the carrying out of the mandate of section 12258, *supra*. The several county councils are required pursuant to said section to appropriate such necessary funds. It is a familiar principle that where mandamus is resorted to in order to compel action on the part of a public officer involving the appropriation or expenditure of public funds facts must be averred showing that there is money which can be legally appropriated and expended for the purpose. *State, ex rel., v. Etcheson*, 178 Ind. 592, at page 597, and cases cited. But the act of 1931, *supra*, has for its evident purpose the providing of such funds in case of a deficiency in the funds available for poor relief and I do not think a county council would be in position to avail itself of the insufficiency of funds in such a case which had been caused by its failure to authorize a loan made necessary to produce such necessary funds. In my opinion, it is the duty of the several county councils in compliance with the provisions of section 1 of chapter 73 of the Acts of 1931 and in connection with the requirements of section 12258 Burns Annotated Indiana Statutes of 1926 to authorize by ordinance the borrowing of funds for poor relief, when necessary, in excess of the amounts which can be reasonably advanced out of the general fund of the county for such purpose under the provisions of existing laws in such reasonable amounts as are necessary to pay the valid claims incurred and filed with such respective boards of commissioners by the respective overseers of the poor.

POOR RELIEF: TOWNSHIP TRUSTEES—INFORMATION
THEY MUST HAVE TO ENABLE THEM TO ACT
OFFICIALLY UPON APPLICATION FOR²⁴

November 6, 1931.

Hon. John H. Hewitt, Director of State Relief Commission, Indianapolis, Indiana.

DEAR SIR: I have before me your oral request for an opinion as to the character of information which a township trustee, acting as overseer of the poor, must have in order to enable him to act officially, upon applications for relief, especially with reference to cases in which such information comes from relief societies and other organizations for charitable purposes operating within his township.

The general statute relating to poor relief was adopted in 1901. Acts of 1901, page 323. Section 1 of this act constitutes the township trustees in their several townships as ex-officio overseers of the poor in said townships. Burns Annotated Indiana Statutes of 1926, section 12255.

Section 6 of the act provides among other things that the "overseer of the poor" in each township shall have the oversight and care of all poor persons in his township so long as they remain a charge, and "*shall see that they are properly relieved and taken care of in the manner required by law.*" Burns Annotated Indiana Statutes of 1926, section 12260.

Section 7 of the act makes it the duty of said overseer of the poor to carefully investigate the circumstances of such poor persons as to whom applications for relief are made so as to ascertain, (1) their legal settlement, (2) their physical condition of sickness or health, (3) their present and previous occupation, (4) their ability and capacity for labor, (5) their ages and the names and ages and the ability and capacity for labor of all members of their family and (6) if they are found to be in distress, the cause of their condition if it can be ascertained. He is required also to inquire as to the family relationships of poor persons for whose benefits claims have been made and as far as possible ascertain whether such persons have relatives able and willing to assist them. Burns Annotated Indiana Statutes of 1926, section 12261.

The above section makes no provision as to the sources to which the "overseer of the poor" may go for his information nor as to how much, if any, cumulative evidence of any given fact is required, but the next section provides in terms as follows:

"Whenever an overseer shall ascertain by investigation that any poor person or family requires assistance, he shall furnish to them such temporary aid as may be necessary for the relief of immediate and pressing suffering; *before any further final or permanent relief in any case is given, the overseer shall consider whether distress can be relieved by other means than an expenditure of township funds.*" (Our italics.) Burns Annotated Indiana Statutes of 1926, section 12262.

²⁴ *Ibid.*, p. 433.

Sections 9 and 10 of the act, being sections 12264 and 12265 of Burns Annotated Indiana Statutes of 1926 emphasize the intent of the italicized language, *supra*, by providing as follows:

"12264. (9749) APPLICANTS TO LABOR.—9. If the poor persons applying are in good health, or if any members of their family are so, the overseer shall insist that those able to labor shall seek employment, and he shall refuse to furnish any aid until he is satisfied that the persons claiming help are endeavoring to find work for themselves. The overseer, in such cases, shall make all possible effort to secure employment for the able-bodied in the township where they reside and may call upon residents of the township to aid him in finding work for such persons as are able to labor.

"12265. (9750) ASSISTANCE BY RELATIVES.—10. If the poor persons applying for township aid have relatives able to assist them who are living in the township, it shall be the duty of the overseer, before giving aid a second time, to call on such relatives, either with material relief or by furnishing them with employment. If any poor person applying for relief is able to labor and refuses to work when given the opportunity, then the overseer shall refuse any further aid to such person, except admission to the county poor asylum, where he shall be compelled to labor."

Section 11 and section 12 of said act as amended in 1925 furnish further limitations upon the overseer's authority, but same are not important as bearing upon your question.

The foregoing will suffice, I think, to disclose the character of investigation which the "overseer of the poor" is required to make before granting aid and also his duty with respect to relieving distress by other means, if possible, other than by the expenditure of township funds. You advise, however, that in many cases it is absolutely impossible for the "overseer" to make personal investigations, and you request information as to his duty in that event. Such a situation is provided for by the authorization of the employment of investigators in certain townships; Burns Annotated Indiana Statutes of 1926, sections 12287 and 12288, Acts of 1931, pages 190 and 254; but the same do not apply to the state generally. The provisions of sections 13 and 14 of the Acts of 1901, *supra*, however, do apply and I think furnish the answer to your question under the conditions referred to. Said sections are sections 12268 and 12269 of Burns Annotated Indiana Statutes of 1926 and are as follows:

"12268. (9753) CHARITABLE SOCIETIES, INQUIRIES.—13. It shall be the duty of each overseer to ascertain what societies for relief of the poor or other organizations for charitable purposes, if any, exist within the township of which he is trustee. Whenever the overseer of the poor finds such societies to exist, he shall make inquiry from the agents or members of the societies as to whom they are aiding in his township, and shall offer them any information he possesses concerning the poor which may be of service to them, and shall ask them for such information regarding the poor and needy persons as they may be able to give him.

"12269. (9754) COOPERATION WITH SOCIETIES.—14. It shall be the duty of the overseer of the poor to acquaint himself, as far as possible, with the work of all such relief societies or other organizations for charitable purposes operating within his township, and to cooperate with them in any way he may deem advisable, to the end that the unnecessary duplication of relief may be avoided and the creation of new families of paupers through misguided and useless alms may cease. The overseer shall also seek the aid of such societies or organizations or their members in securing employment for those who apply to him, when they are found able to labor."

It is my opinion, therefore, that in cases where it is impossible for an "overseer of the poor" to make personal investigations of applicants for poor relief he would be authorized to rely upon information obtained from societies for the relief of the poor or other charitable organizations, if he believes such information to be reliable, especially in cases in which he is not authorized by law to employ investigators.

It is my opinion also that the township trustees may call upon the societies for the relief of the poor and other organizations for charitable purposes for their assistance in making investigation of applicants for poor relief, and is required by statute to cooperate with them in the carrying out of the intent of the act.

It is furthermore my opinion that when the applicant is able-bodied and refuses suitable employment provided by any society for the relief of the poor or other organization for charitable purposes, such applicant cannot lawfully receive any aid from the poor fund of the township within which he lives other than admission to the county poor asylum. Burns Annotated Indiana Statutes of 1926, section 12265.

TOWNSHIP TRUSTEES: PROCEDURE FOR FILING CLAIMS FOR AID FURNISHED ON ORDER OF OVERSEER OF POOR²⁵

December 22, 1931.

Hon. Lawrence F. Orr, State Examiner, Indianapolis, Indiana.

DEAR SIR: I have before me your letter enclosing a letter from the township trustee of . . . township, . . . County, Indiana, in which he makes the following statement, "In my opinion, the person furnishing supplies to the pauper upon order of the trustee should file with the county auditor his itemized claim for the supplies so furnished; that the order issued by the trustee should be attached to and form a part of such itemized claim; that the county auditor should issue his warrant in payment for such claim direct to the person so furnishing supplies, after said claim has been allowed by the board of county commissioners."

You request an opinion as to whether the above is the proper method of payment of poor fund claims. The answer to the question submitted depends largely upon the sections of the statute hereafter referred to. Section 12258 of Burns

²⁵ *Ibid.*, p. 299.

Annotated Indiana Statutes of 1926 provided among other things, that the "county council shall appropriate and the board of commissioners in each county shall advance to the township trustees the money necessary for the relief and burial of the poor in each township, which shall be accounted for and repaid to the county treasury as hereinafter provided."

Section 12291 of Burns Annotated Indiana Statutes of 1926 provides the method for reimbursement of the county for said advancements.

Burns Annotated Indiana Statutes of 1926, section 12274, provides that the township trustee as the overseer of the poor, shall keep a full record of every person to whom he gives relief and among other things, the reason for the giving of relief in each instance, and section 12275 of Burns Annotated Indiana Statutes of 1926, provides that before the board of county commissioners can approve or allow payment from the county treasury of the relief to any person relieved, two copies of the record required to be kept by the township trustee shall be filed in the office of the auditor of the county in which the relief was given.

Burns Annotated Indiana Statutes of 1926, section 11888, provides that the county auditor shall examine and settle all accounts and demands chargeable against his county and "*issue his orders on the treasurer of the county, payable to the person entitled thereto.*" (Our italics).

Pursuant to the above provisions, the various overseers of the poor in most instances render aid by giving the person applying for aid an order on some merchant for food or fuel in lieu of furnishing the aid directly, and the question arises whether the overseer in such cases should first file a claim for aid thus furnished and then pay the merchant furnishing it, or whether the merchant furnishing such aid should file his claim directly against the county.

In my opinion the merchant furnishing merchandise to a poor person upon the order of the overseer of the poor, may enforce his claim against the county required to advance such funds in that behalf and within the provisions of section 11888, *supra*, is the proper person entitled to payment from the treasurer; in other words, "the person entitled thereto."

POOR RELIEF: WHETHER TOWNSHIP MAY SPEND
PUBLIC FUNDS FOR THE PURCHASE OF
CITY FOR COMMUNITY GARDENS²⁶

April 5, 1932.

Hon. John H. Hewitt, Secretary, Indiana Commission for the Relief of Distress
Due to Unemployment, Indianapolis, Indiana.

DEAR SIR: I have before me your letter in which you submit the following question:

"May I ask you for an official opinion as to the ability of the township trustee to purchase seed for community gardening?"

²⁶ *Ibid.*, p. 436.

I do not find anything in our laws for the relief of the poor which, in my opinion, authorizes the township trustee to use public funds for the purpose of purchasing seeds for the conduct of community gardening.

Section 12261 of Burns Annotated Indiana Statutes of 1926, provides as follows:

"Whenever a claim for relief shall be made upon an overseer of the poor for the benefit of any persons or families of persons claiming to be poor and in distress, it shall be the duty of the overseer of the poor to carefully investigate the circumstances of such poor persons, so as to ascertain their legal settlement, their physical condition of sickness or health, their present and previous occupation, their ability and capacity for labor, their ages and the names and ages and the ability and capacity for labor of all members of their family, and if they are found to be in distress, the cause of their condition, if it can be ascertained. The overseer of the poor shall also inquire as to the family relationship of poor persons for whose benefit claims for relief are made, and, as far as possible, shall ascertain whether such persons have relatives able and willing to assist them."

Section 12262 of Burns Annotated Indiana Statutes of 1926 requires the township trustee to furnish such temporary aid as may be necessary for the relief of immediate and pressing suffering when he ascertains from his investigation that the person or family making a claim requires assistance.

Section 12266 of Burns Annotated Indiana Statutes of 1926 limits the township trustee, except in the case of expense for burial, medical relief or assistance of children under the compulsory education law, to aid of the value of fifteen dollars to any poor person or family without submitting a statement of the case to the board of county commissioners, and section 12267 of said Burns Annotated Indiana Statutes of 1926 provides that said board upon inspection of the statement, for the county auditor, during the interim between meetings of the board of county commissioners, may authorize the township trustee to extend further aid. The above provision is further limited, in some cases, by the provisions of chapter 74 of the Acts of 1931, but such limitation has no bearing on the question submitted by you.

I think the provisions of the above statutes indicate rather definitely the extent and character of poor relief to be furnished by the township trustee and I do not see anything in them which would authorize a township trustee as "overseer of the poor" of his township to cooperate in a community gardening project by furnishing seeds to be paid for out of the poor fund. I think such projects will have to be financed by voluntary organizations for poor relief rather than by the township trustee as the statutes are now written. The same reasoning which would authorize a township trustee to furnish the seeds for such a project, would authorize him to furnish implements of cultivation, fertilizer and other things which might become necessary to produce a crop and I do not think such expenditures are within the scope of his powers.

BOARD OF CHARITIES: STATUTE WHICH IS EFFECTIVE
IN APPOINTING AND PAYING INVESTIGATORS OF
THE POOR IN CERTAIN TOWNSHIPS²⁷

September 14, 1932.

Hon. John A. Brown, Secretary, Board of State Charities, Indianapolis, Indiana.

DEAR SIR: I have before me your request for an official opinion on which statute is effective in appointing and paying investigators of the poor in certain townships.

In 1931 (Acts [1931], chap. 74. p. 190), the general assembly enacted an act concerning the business of certain townships, to wit:

"That it shall be the duty of the township advisory board in any township of this state having one or more second class cities, and which are not county seats, wholly or partially contained therein, and the township advisory board of any township having any first class city located wholly or partially therein to meet at least once in each month to consider the needs of such township for the relief of the poor therein, and to determine the amount to be expended for such relief during the calendar month immediately following such meeting."

Section 2 of the above referred to act provides:

"It shall be the duty of such township advisory board to designate and determine what, if any, persons shall be employed by the trustee of such township as investigators or assistants in discharging his duties concerning the relief of the poor in such township, and to fix the salaries to be paid to such investigators and assistants," etc.

The special session of the general assembly of 1932, by House Bill No. 715, which will be 1932 (special session) acts, chapter 58, amended section 1, Acts 1931, chapter 87, page 254, as follows:

"That the township trustee of each township of this state, situated in counties having a population of fifty thousand or more, according to the last preceding United States census, shall be allowed to appoint and pay those appointed by him as investigators of the poor an amount not to exceed four dollars per day out of the township poor fund on legal requisitions approved by the board of county commissioners of the county in which such township is situated. The number of investigators of the poor paid out of the township poor fund, as hereinbefore provided, shall not, at any one time, exceed one investigator for each two hundred families which are being given assistance by the township trustee. Any and all investigators employed after the taking effect of this act by the several township trustees in counties having a population of more than one hundred fifty thousand and according to the last preceding United States census, shall be employed on the basis of their training or experience in social service, according to such rules and regulations for the employment thereof as may be prescribed by the board of state charities."

²⁷ *Ibid.*, p. 430.

The act of 1932 specifically provides that it applies to all townships in counties having a population of fifty thousand or more, according to the last preceding United States census.

It is evident that all counties included in Acts (1931), page 190, are included in the act of the special session of 1932.

It is, therefore, my opinion that section 2 of Acts (1931), page 190, is effective only in townships as designated in section 1 thereof, and having a population of less than fifty thousand and that the act by the special session should be followed in the appointment and payment of investigators for the poor of townships of fifty thousand and more.

V. LIST OF OPINIONS OF THE ATTORNEY-GENERAL

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¹ These numbers refer to the page references in the text (*italic* for discussion within the chapters, *roman* for the opinion itself).

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- Hospitals: Superintendent and Matron Contracting Bill against Township Poor Fund without Consulting Township Trustee (*ibid.*, 1929-30, p. 359). 326 November 6, 1929
- Paupers: Negotiating Temporary Loan for Claims for Poor Relief (*ibid.*, p. 434). 86, 329 October 6, 1930
- Poor Relief: Filing of Claims by School Corporation Approved by Township Trustee and Allowed by County Board of Commissioners out of Township Poor Fund, without Appropriation by Township Advisory Board (*ibid.*, 1931-32, p. 289). 84, 330 August 27, 1931
- Poor Relief: Compelling County Council To Authorize Loan Provided in Acts 1931, Page 188 (*ibid.*, p. 297). 331 November 6, 1931
- Poor Relief: Township Trustees—Information They Must Have To Enable Them To Act Officially upon Application for (*ibid.*, p. 433), 89, 333 November 6, 1931
- Township Trustees: Procedure for Filing Claims for Aid Furnished on Order of Overseer of Poor (*ibid.*, p. 299). 335 December 22, 1931
- Poor Relief: Whether Township May Spend Public Funds for the Purchase of City for Community Gardens (*ibid.*, 436). 90, 336 April 5, 1932
- Board of Charities: Statute Which Is Effective in Appointing and Paying Investigators of the Poor in Certain Townships (*ibid.*, p. 430). 338 September 14, 1932

VI. LIST OF STATUTES ENACTED BY INDIANA IN CONNECTION WITH THE RELIEF OF THE POOR

1790. "AN ACT to authorize and require the courts of general quarter sessions of the peace to divide the counties into townships and to alter boundaries of the same when necessary, and also to appoint constables, overseers of the poor, and clerks of the townships, and for other purposes therein mentioned," published November 6, 1790 in *Statutes of Ohio and the Northwestern Territory Adopted or Enacted from 1788 to 1833 Inclusive*, ed. Salmon P. Chase, I (Cincinnati, 1833), 107-9.
1792. "AN ACT directing the manner in which money shall be raised and levied, to defray the charges within the several counties in the territory," passed August 1, 1792 (*ibid.*, p. 118).
1795. "A LAW for the relief of the poor," published June 19, 1795, to take effect October 1, 1795 (*ibid.*, pp. 175-82).
1799. "AN ACT supplementary to the act entitled 'A law for the relief of the poor,'" approved December 19, 1799 (*ibid.*, pp. 284-85).
1803. "A LAW Concerning Servants," September 22, 1803 (*Laws of Indiana Territory* chap. ii, p. 26). (Servants were not to be chargeable to the counties before their term of servitude expired.)
1803. "A LAW ascertaining and regulating the fees of the several officers and persons therein named," published September 24, 1803 (*Laws of Indiana Territory*, chap. iii, p. 32).
1803. "A LAW to regulate county levies," November 5, 1803 (*ibid.*, p. 63).
1805. "AN ACT respecting apprentices," August 15, 1805 (*ibid.*, chap. vi, p. 5).
1805. "AN ACT concerning the introduction of Negroes and Mulattoes," August 26, 1805 (*ibid.*, chap. xxvi, p. 25). (Bond with sufficient security had to be given, when Negroes or Mulattoes were registered, with the condition that they would not become a county charge after their term of service expired.)
1807. "A LAW for the relief of the Poor," September 17, 1807 (*ibid.*, chap. xxiii, p. 119).
1807. "AN ACT to prevent Tresspassing by cutting of Timber," September 17, 1807 (*ibid.*, chap. xxxv, p. 187). (Penalties, provided for the cutting of certain timber, to be recovered by the Overseer of the poor to be used for poor relief.)
1807. "AN ACT concerning Trespassing Animals," September 17, 1807 (*ibid.*, chap. xix, p. 100). (Fines for trespassing animals to go for poor relief fund.)
1807. "AN ACT Concerning Vagrants," September 16, 1807 (*ibid.*, chap. lxxxii, p. 483).

1807. "AN ACT declaring that the Laws of the Territory as Revised and Reported to the Legislature, shall with the several additions, amendments and alterations made to the Original Laws have force in the Territory," September 19, 1807 (*ibid.*, chap. xcvi, p. 539).
1807. "AN ACT for opening and regulating public roads and highways," September 17, 1807 (*ibid.*, chap. xlv, p. 288). (All males 21-50 years, who have resided in the township for thirty days and who are not county charges, liable to work on the roads for twelve days of each year.)
1808. "AN ACT to amend an act entitled 'An Act for opening and regulating public roads and highways,'" October 14, 1808 (*ibid.*, chap. ii, p. 5). (All males between 18-50 years to work on the roads every year.)
1810. "AN ACT to repeal an Act entitled, 'An Act for the introduction of negroes and mulattoes into this territory and for other purposes,'" December 14, 1810 (*ibid.*, chap. xxviii, p. 54).
1810. "AN ACT for the support of illegitimate children," December 15, 1810 (*ibid.*, chap. xxiii, p. 63).
1813. "AN ACT providing a means to help and speed poor persons in their suits," February 24, 1813 (*ibid.*, chap. iv, p. 10).
1815. "AN ACT concerning Insane Persons," December 26, 1815 (*ibid.*, chap. xviii, p. 66).
1816. "AN ACT concerning Vagrants," January 24, 1816 (*Laws of Indiana, 1817-18*, chap. lxii, p. 329).
1816. "AN ACT to provide for the election of County and township officers," December 24, 1816 (*ibid.*, chap. xiv, p. 112).
1816. "AN ACT to establish a board of County Commissioners," December 17, 1816 (*ibid.*, chap. xv, p. 115).
1817. "AN ACT for the relief of the poor," January 24, 1818 (*ibid.*, chap. xiv, p. 154).
1817. "AN ACT to establish a County Treasurer," January 1, 1817 (*ibid.*, chap. xlv, p. 285).
1817. "AN ACT providing for the support of illegitimate children," January 22, 1818 (*ibid.*, chap. xxxvi, p. 229).
1818. "AN ACT for the relief of the Poor," January 24, 1818 (*ibid.* [1818], chap. xiv, p. 154).
1819. "AN ACT amendatory to an act entitled, 'An Act for the relief of the poor,'" January 26, 1819 (*ibid.*, chap. xx, p. 31).
1820. "AN ACT to provide for the erection of a house for the employment of the poor of Knox County," January 9, 1821 (*ibid.*, chap. xlv [1820], p. 102).
1821. "AN ACT supplemental to an act entitled, 'An Act for the relief of the poor,'" December 17, 1821 (*ibid.* [1821], chap. xviii, p. 27).
1824. "AN ACT for the relief of the Poor," January 30, 1824 (*ibid.* [1824], chap. lxxii, p. 278).
1825. "AN ACT providing for ascertaining the expense of supporting the poor annually in the state," January 13, 1826 (*ibid.* [1825], chap. xli, p. 49).

1826. "AN ACT regulating the manner of doing county business in certain counties therein named and also to elect township officers," January 26, 1827 (*ibid.* [1826], chap. xiii, p. 15).
1827. "AN ACT amendatory of the act entitled, 'An act for the relief of the poor, approved January 30, 1824,'" January 24, 1828 (*ibid.* [1827], chap. xlv, p. 68).
1827. "AN ACT relative to the Knox County Poor House," January 5, 1828 (*ibid.* [1828], chap. xlvii, p. 69).
1830. "AN ACT authorizing Asylums for the Poor in the counties of Washington and Dearborn," January 29, 1830 (*ibid.* [1829-30], chap. iii, p. 7).
1830. "AN ACT to amend an act entitled 'An act for the relief of the Poor, January 30, 1824,'" January 25, 1830 (*ibid.*, chap. iv, p. 8).
1830. "AN ACT authorizing asylums in the counties of Wayne, Harrison, and Jefferson," December 29, 1830 (*Special Acts* [1830-31], chap. iii, p. 6).
1831. "AN ACT for the relief of the Poor," February 10, 1831 (*Laws of Indiana*,
1832. "AN ACT to authorize the Board of Commissioners of Floyd County to contract for the keeping and taking care of the paupers of said county, and for other purposes," January 24, 1832 (*ibid.* [1831-32], chap. xviii, p. 20).
1832. "AN ACT respecting the Knox County Poor House," January 24, 1832 (*ibid.*, chap. xxi, p. 22).
1833. "AN ACT to authorize the Board of Commissioners of Knox County to provide for the support of the paupers of said county," January 29, 1833 (*ibid.* [1832-33], chap. xxxi, p. 27).
1833. "AN ACT to establish the Saint Joseph Orphan Asylum," February 2, 1833 (*ibid.*, chap. lxix, p. 75). (Overseers of the poor were to be discharged from the duty and responsibility of providing for such poor orphans as shall be taken under the care and protection of the said board of trustees.)
1834. "AN ACT to authorize an Asylum for the poor of the counties of Franklin, Fayette and Union," January 23, 1834 (*ibid.* [1833-34], chap. v, p. 9).
1834. "AN ACT to amend an act entitled, 'An act for the relief of the poor' February 10, 1831," February 1, 1834 (*ibid.*, chap. vi, p. 11). (Children not bound out as apprentices were to be educated at the asylums.)
1835. "AN ACT to amend 'an act for the relief of the poor,'" February 7, 1835 (*Laws of a General Nature of the State of Indiana* [1834-35], chap. xlvi, p. 65).
1835. "AN ACT to amend, 'An act to regulate the mode of doing county business in the Several Counties of this State,'" February 7, 1835 (*ibid.*, chap. 1, p. 72).
1836. "AN ACT to Amend an act entitled, 'An Act for the relief of the poor,'" approved February 10, 1831," February 4, 1836 (*ibid.* [1835-36], chap. xxvi, p. 60). (In Clark County transient poor to be removed to the County Asylum for temporary relief.)

1836. "AN ACT to amend an act entitled, 'An act for the relief of the poor,' approved February 10, 1831," February 8, 1836 (*ibid.*, chap. xxvii, p. 61). (Overseers of the poor to be allowed one dollar a day when necessarily employed in discharging their duties.)
1838. "AN ACT to amend an act entitled, 'An act for the relief of the poor,' approved February 17, 1838," February 16, 1839 (*ibid.* [1838-39], chap. xlvii, p. 63). (Township poor to be received into asylum, transient as well as settled poor.)
1840. "AN ACT to provide for the indigent blind of the state," February 7, 1840 (*ibid.* [1839-40], chap. li, p. 71).
1840. "AN ACT to amend, 'An act concerning insane persons' approved February 22, 1818," February 12, 1840 (*ibid.*, chap. lii, p. 72).
1841. "AN ACT to amend an act entitled, 'An act for the relief of the poor,' approved February 17, 1838, so far as the same relates to Marion County," February 4, 1841 (*General Laws* [1840-41], chap. lxviii, p. 151). (County Board in Marion County may appoint superintendent of asylum and employ physicians for all sick persons, resident or transient.)
1842. "AN ACT to amend 'An act for the relief of the poor,' approved February 17, 1838," January 29, 1842 (*ibid.* [1841-42], chap. xciv, p. 115).
1842. "AN ACT to amend 'An act concerning insane persons,' approved January 22, 1818," January 31, 1842 (*ibid.*, chap. clxvii, p. 171).
1844. "AN ACT for the relief of the boatmen on the Wabash and Erie Canal and for the establishment of a medical infirmary," January 15, 1844 (*ibid.* [1843-44], chap. xv, p. 33).
1844. "AN ACT to establish an asylum for the education of deaf and dumb persons in the state of Indiana," January 15, 1844 (*ibid.*, chap. xvi, p. 36).
1844. "AN ACT relative to Overseers of the poor," January 15, 1844 (*ibid.*, chap. xxiii, p. 48). (Justices of the Peace to be ex-officio overseers of the poor.)
1846. "AN ACT relative to Apprentices," January 19, 1846 (*ibid.* [1845-46], chap. lxxi, p. 83). (Overseers of poor to require masters and mistresses to provide suitable education for the apprentice.)
1847. "AN ACT to amend an act entitled, 'An act relative to overseers of the poor,' approved January 15, 1844" (*ibid.* [1846-47], chap. xlviii, p. 76). (Any two justices may act as overseers.)
1848. "AN ACT exempting the property of the blind and deaf and dumb persons from taxation," February 16, 1848 (*ibid.* [1848], chap. lxxvi, p. 73). (Also exempts them from work on county highways and poll tax.)
1849. "AN ACT in relation to Paupers in the county of Dearborn," January 16, 1849 (*ibid.* [1849], chap. xcvi, p. 87). (County Board to make no allowances for paupers unless removed to county asylums.)
1849. "AN ACT to repeal an act passed January 15, 1844, so far as relates to Fairfield Township, Tippecanoe County," January 16, 1849 (*ibid.* [1849-

- 50], chap. cxlix, p. 138). (Overseers to be annually elected. Justices authority to act as overseer repealed.)
1850. "AN ACT for the temporary relief of the poor in Dearborn County," January 15, 1850 (*ibid.*, chap. clxxiii, p. 141).
1850. "AN ACT to amend sec. 141 of Chapter 35, of the Revised Laws of 1843 relating to the duties of the Overseers of the poor," January 15, 1850 (*ibid.* [1850], chap. clxxiv, p. 141). (Education statute to be optional as applies to colored children.)
1850. "AN ACT to authorize the Commissioners of Carroll County to employ a physician for the poor," January 16, 1850 (*ibid.*, chap. clxxv, p. 142).
1851. "AN ACT to amend an act entitled, 'An act relative to Overseers of the Poor,' approved January 15, 1844, so far as it relates to the County of Clay," January 21, 1851 (*ibid.* [1851], chap. cxxvi, p. 134).
1851. "AN ACT in reference to the poor of Wayne Township, Allen County, Indiana," February 8, 1851 (*ibid.*, chap. cxxvii, p. 135). (Township trustees to employ physicians for the poor.)
1851. "AN ACT to authorize the Board of Commissioners of Pike and Gibson Counties to employ by the year a physician to attend on the paupers of said County," February 8, 1851 (*ibid.*, chap. xxv, p. 50).
1859. "AN ACT to provide a more uniform mode of doing township business, prescribing the duties of certain officers in connection therewith and to repeal all laws conflicting with this act," February 18, 1859 (*Laws of Indiana* [1859], chap. cxxxiii, p. 220).
1859. "AN ACT to amend section 8 of an act entitled, 'An act to authorize and limit allowances by courts and boards and drafts upon County Treasurers, approved May 27, 1852,'" March 5, 1859 (*ibid.*, chap. v, p. 34). (To allow Overseers of the Poor to employ physicians and surgeons in townships not otherwise provided for and where necessary.)
1861. "AN ACT supplemental to an act entitled, 'An Act to provide for the relocation of county seats and to provide for the conveyance of the asylum for the poor in certain cases and, to provide, also, that the Trustees created under the act to which this is supplemental shall constitute bodies politic and corporate,'" June 4, 1861 (*ibid.* [1861], chap. xvi, pp. 28-29).
1867. "AN ACT to amend section 2 and 6 of an act entitled, 'An Act to incorporate the widows and Orphans Asylum of Indianapolis,' approved February 13, 1851," March 7, 1867 (*ibid.* [1867], chap. cxxiv, p. 229).
1869. "AN ACT regulating the Fees, Salaries and Duties of certain officers therein named and prescribing penalties for the violation of its provision," February 21, 1871 (*ibid.* [1871], chap. xvii, p. 25). (Justice of Peace to receive 50 cents for order of removing pauper from County. Township Trustee to be allowed two and one half dollars for each day's actual services.)
1873. "AN ACT regulating the fees of officers and providing penalties for its

- violation, repealing certain acts therein named, and providing duties to be performed by State, county and township officers, and matters properly connected therewith, and declaring an emergency" March 8, 1873 (*ibid.* [1873], chap. xlviii, p. 119). (Township trustees to be allowed three dollars for each day's actual services.)
1873. "AN ACT for the relief of the indigent cripples of the State of Indiana," March 8, 1873 (*ibid.*, chap. xli, p. 106).
1875. "AN ACT supplemental to an act concerning the organization and perpetuity of voluntary associations, and repealing an act entitled "An act concerning the organization of voluntary associations, and repealing former laws in reference thereto," approved February 12, 1855, and repealing each act repealed by said act, and authorizing gifts or devises by will to be made to any corporation or purpose contemplated by this act, and providing that the Boards of Commissioners of counties shall, in certain cases, allow for the support of orphan children, who are cared for by associations organized under the third specification of the second section of said act, and requiring such orphan children to be furnished with homes, as expeditiously as practicable, and making the Senior Commissioner in service a member *ex-officio* of the Board of Officers of such association; also providing that no distinction shall be made on account of the nativity, complexion, or religious belief of such orphan or their parents. (Approved February 26, 1875) (*ibid.* [1875], chap. cxix, p. 169.)
1879. "AN ACT to provide for the organization and support of an asylum for feeble-minded children; to provide for the appointment by the Governor, of a board of trustees of the 'Soldier's Orphans Home' and for said asylum, and to abolish the office of trustees of the 'Soldiers Orphans Home,'" March 7, 1879 (*ibid.* [1879], chap. iv, p. 11).
1881. "AN ACT concerning public offenses and their punishment," April 14, 1881 (*ibid.* [1881], chap. xxxvii, p. 174). (Fines established for persons who knowingly bring pauper within state with the intention of making him a charge on any county of the state.)
1881. "AN ACT to authorize County Commissioners to provide by purchase, suitable asylums for the use and occupancy of children who are proper charges upon the county, limiting the amount to be so expended, defining who shall have the management of such asylums; who shall be received therein; providing for their support, and declaring an emergency," March 1, 1881 (*ibid.*, chap. vii, p. 10).
1885. "AN ACT to amend 'an Act to authorize County Commissioners to provide by purchase, suitable asylum for the use and occupancy of children who are proper charges upon the county, limiting the amount to be so expended, defining who shall have the management of such asylum; who shall be received therein; providing for their support, and declaring an emergency, approved March 1, 1881 (being section 3511 of the Revised Statutes of 1881) so as to permit the Commissioners of different counties

- to unite in the purchase of grounds and buildings for an orphans' home, and declaring an emergency," March 25, 1885 (*ibid.* [1885], chap. ix, p. 100). (Two or more counties may unite to build asylums.)
1889. "AN ACT concerning Orphans' Homes and Homes for Destitute and Orphaned Children, incorporating the same, providing for the care, custody and control of orphan and destitute children and the release of the care, custody and control of orphan and destitute children by parents, guardians, township trustees, boards of county commissioners and overseers of the poor and provisions that the Board of Directors Trustees and Managers of Homes for Orphans and Destitute Children find places in suitable homes, and declaring an emergency," March 8, 1889 (*ibid.* [1889], chap. cvii, p. 215).
1889. "AN ACT to authorize Boards of County Commissioners to make appropriations to aid in establishing homes for worthy indigent old women who are unable to take care of themselves, and declaring an emergency," March 2, 1889 (*ibid.*, chap. lvi, p. 87). (If property to the amount of \$12,000 or more is given for the purpose of establishing such, the County Commissioners may appropriate up to \$25,000 to aid in such.)
1889. "AN ACT fixing the salary of County Commissioners and Township Trustees and declaring an emergency," March 6, 1889 (*ibid.*, chap. lxxxviii, p. 186).
1889. "AN ACT concerning the placing in houses, the adoption and apprenticeship of inmates of orphan asylums or homes organized under the laws of the State of Indiana, concerning voluntary associations and declaring an emergency," March 8, 1899 (*ibid.*, chap. clx, p. 305).
1889. "AN ACT relating to the care, custody and binding out of children, and providing punishment for persons who cruelly treat or neglect them," March 9, 1889 (*ibid.*, chap. cci, p. 363). (The guardians of the poor were to have the custody and may be responsible for the care of children if no other person is legally responsible.)
1889. "AN ACT to establish a Board of Childrens Guardians in townships having a population of more than 75,000 persons; defining the powers and duties of said board, providing for a special township tax for the establishment and maintaining of homes under the care of such boards, and declaring an emergency," March 9, 1889 (*ibid.*, chap. cxxv, p. 261).
1889. "AN ACT to establish a Board of State Charities, prescribing their duties, appropriating \$4000 and declaring an emergency," February 28, 1889 (*ibid.*, chap. xxxvi, p. 51).
1893. "AN ACT concerning the incorporation and government of cities having more than 50,000 and less than 100,000 population according to the last United States Census and matters connected therewith and declaring an emergency," March 3, 1893 (*ibid.* [1893], chap. lix, p. 65). (A department of Health and Charities was to be established under the control of three commissioners, one of whom was to be a practicing physician and

not more than two of the same political party. They were to have the responsibility for the city hospital, city dispensary, city charities and the registration of vital statistics.)

1893. "AN ACT to amend an act entitled 'An Act to amend an act entitled an act to establish a Board of Children's Guardians in a township having a population of more than 75,000 persons, defining the powers and duties of said Board, providing for a special tax for the establishment and maintaining of houses under the care of such Boards' and declaring an emergency, approved March 9, 1899 amended March 9, 1891," March 3, 1893 (*ibid.*, chap. cxxii, p. 282). (This was changed to include counties having a population of 50,000 inhabitants.)
1895. "AN ACT to provide for a record of persons receiving aid from public funds; regulating expenditures for such and repealing conflicting laws," March 11, 1895 (*ibid.* [1895], chap. cxx, p. 241).
1897. "AN ACT to authorize the better care and control of orphan, dependent, neglected, and abandoned children, providing for the establishment, government, maintenance of associations and asylums, the appointment of agents, an appropriation for the payment of the expenses of such county agents; regulating the retention of children in county poor asylums; repealing all laws in conflict therewith and declaring an emergency," February 23, 1897 (*ibid.* [1897], chap. xl, p. 44).
1897. "AN ACT concerning the education of children," March 8, 1897 (*ibid.*, chap. clxv, p. 248). (Indigent children were to be provided with books and school clothing.)
1897. "AN ACT to amend section thirty-five (35) of an act entitled, 'An act for the relief of the poor,' approved June 9, 1852," March 8, 1897 (*ibid.*, chap. cli, p. 230). (Township trustees were to levy taxes with which the county treasury would be reimbursed for money expended during the preceding year on township poor relief. If the trustees failed to levy this tax the county commissioners were authorized to do so.)
1899. "AN ACT to regulate the management of county asylums for the poor, defining the method of appointing the Superintendent and other officers, defining certain duties of the commissioners of the counties, prescribing the methods of purchasing supplies and selling products, the discipline and employment of inmates and other matters pertaining thereto, and repealing all laws or parts of laws in conflict therewith," February 23, 1899 (*ibid.* [1899], chap. lxxvi, p. 103).
1899. "AN ACT concerning county business," March 3, 1899 (*ibid.*, chap. cliv, p. 343).
1899. "AN ACT concerning township business," February 27, 1899 (*ibid.*, chap. cv, p. 150).
1899. "AN ACT to regulate the importation of dependent children and providing a penalty for violation thereof and other matters connected therewith," February 13, 1899 (*ibid.*, chap. xxix, p. 41).

1899. "AN ACT to amend Section ten (10) of an act entitled 'An Act to provide for the more uniform mode of doing county business, prescribing the duties of certain officers in connection therewith and to repeal all laws conflicting with this Act approved February 18, 1859, and declaring an emergency,'" February 22, 1899 (*ibid.*, chap. lxxxi, p. 93).
1899. "AN ACT to regulate the administration of the relief of poor persons and prescribing certain duties of the overseers of the poor and other officers in relation thereto," February 24, 1899 (*ibid.*, chap. xc, p. 121).
1899. "AN ACT to amend section thirty-one (31) of an act entitled, 'An Act for the relief of the poor' approved June 9, 1852, in force May 6, 1853," February 24, 1899 (*ibid.*, chap. lxxxvii, p. 118).
1899. "AN ACT to provide a Board of County Charities and Corrections and define the powers and duties of said Boards," February 17, 1899 (*ibid.*, chap. xxxiv, p. 50).
1901. "AN ACT concerning incurably insane paupers in counties having a population of 150,000 or more, according to the last preceding United States Census," March 11, 1901 (*ibid.* [1901], chap. cxcv, p. 430). (County Council was authorized by this act to pass an ordinance appropriating funds for the erection of an asylum for the incurably insane.)
1901. "AN ACT for the relief of the poor, repealing all laws in conflict therewith," March 9, 1901 (*ibid.*, chap. cxlvii, p. 323).
1901. "AN ACT to amend Section seven (7) of an act entitled 'An Act to authorize the better care and control of orphan, dependent, neglected and abandoned children, providing for the establishment, government, maintenance of association and asylum, the appointment of agents, an appropriation for the payment of the expenses of such agents, regulating the retention of children in county poor asylums, repealing all laws in conflict therewith and declaring an emergency,' approved February 23, 1897," March 11, 1901 (*ibid.*, chap. ccvi, p. 460).
1901. "AN ACT entitled 'An Act to regulate the disposition of unexpended money which has been paid by any Board of Commissioners to associations, boards of managers or matrons, that may have been or may hereafter be legally employed by said county commissioners to care for dependent, neglected, ill-treated, orphaned and abandoned children; providing for the return to and making a part of the general fund of such unexpended money that has already been paid into a county treasury and declaring an emergency,'" March 9, 1901 (*ibid.*, chap. clv, p. 341).
1901. "AN ACT to amend an act entitled, 'An Act to provide Boards of County Charities and Commissioners and define the powers and duties of such boards, approved February 17, 1899,'" March 11, 1901 (*ibid.*, chap. clxxxiii, p. 412). (Quarterly reports were to be furnished the Board of State Charities.)
1901. "A BILL for an Act to establish a Board of Children's Guardians in each county," March 11, 1901 (*ibid.*, chap. clxiii, p. 369).

- 1903. "AN ACT authorizing the establishment and maintenance of hospitals by Boards of County Commissioners in the respective counties, either with or without the aid of hospital associations and authorizing such boards to receive and accept aid and donations from them and providing for the management and control thereof and the manner of raising funds to pay for expense of same," March 4, 1903 (*ibid.* [1903], chap. lxxxvi, p. 167).
- 1903. "AN ACT concerning dependent children, the placing of them in custodial institutions and fixing a compensation for their support and declaring an emergency," March 12, 1903 (*ibid.*, chap. ccxlvii, p. 537).
- 1903. "AN ACT providing for a Juvenile Court," March 10, 1903 (*ibid.*, chap. ccxxxii, p. 516).
- 1903. "AN ACT regulating the transfer of dependent children in orphans' homes and other custodial institutions for dependent children from one school corporation to another, providing for their education, authorizing appeals, the settlement of disputed claims, and declaring an emergency," February 6, 1903 (*ibid.*, chap. viii, p. 15).
- 1903. "AN ACT concerning the support of orphan and dependent children," March 7, 1903 (*ibid.*, chap. cvi, p. 204).
- 1903. "AN ACT authorizing and empowering the Judges of the Circuit and Supreme Courts to take minor children from parents in divorce cases and place them in Orphans' Homes," February 21, 1903 (*ibid.*, chap. xxiv, p. 39).
- 1905. "AN ACT concerning public offenses," March 10, 1905 (*ibid.* [1905], chap. clxix, p. 584). (Fines established for persons bringing paupers into state for the purpose of support. Also, public officers were liable to fines if they permitted any lawful place of confinement to become foul.)
- 1905. "AN ACT regulating the labor of inmates of the Indiana reformatory on state account, providing for the schooling and training of the inmates, providing for trade schools, the utilization of the inmates' labor for state account and the disposition of all articles made in such trade schools on state account, providing that state institutions and political divisions of the state shall purchase certain articles from the management of the reformatory and providing the necessary appropriation as well as certain other matters relating thereto, and providing penalties therefor," March 4, 1905 (*ibid.*, chap. cvii, p. 178).
- 1907. "AN ACT requiring counties, cities and towns to supply free antitoxin to citizens who are too poor to purchase the same, directing the duties of township trustees, physicians and the State Board of Health in regard to the matter, repealing acts in conflict and prescribing penalties," March 9, 1907 (*ibid.* [1907], chap. clxiii, p. 260).
- 1907. "AN ACT to amend Section thirty-eight (38) of an act entitled, 'An Act for the relief of the poor, repealing all laws in conflict therewith,' approved March 9, 1901," March 9, 1907 (*ibid.*, chap. clxi, p. 256). (If the County treasury is not fully reimbursed by the township at the end of the year,

this amount has to be provided for as the new tax levy is made and the township is held responsible for it.)

1907. "AN ACT to amend section thirty-four (34) of an act for the relief of the poor and repealing all laws in conflict therewith, approved March 9, 1901," March 9, 1907 (*ibid.*, chap. cxciii, p. 330).
1907. "AN ACT entitled, An Act authorizing cities, counties and townships in this state to make appropriations of money for, and to aid in the maintenance of, hospitals in cases as therein specified, or by the levy and collection of a special tax therefor, or otherwise, to contract for the care of the poor in hospitals as herein specified and legalizing appropriations of money therefor, made by any city for such purposes, and declaring an emergency," March 9, 1907 (*ibid.*, chap. clv, p. 250).
1909. "AN ACT relative to the management of county jails, providing for the supervision over and regulating county jails, the confinement of persons in such jails and matters connected therewith," March 8, 1909 (*ibid.* [1909], chap. clxiv, p. 397).
1911. "AN ACT to amend Section four (4) of an act entitled, 'An Act concerning township business,' approved February 27, 1899," March 4, 1911 (*ibid.* [1911], chap. cxliv, p. 355).
1911. "AN ACT for the establishment and maintenance of a hospital in Marion County, Indiana, in connection with the Indiana University School of Medicine, providing for accepting donations, sale of real estate and for control and management thereof, and providing for a method of conveyance of real estate and making an appropriation therefor and declaring an emergency," February 7, 1911 (*ibid.*, chap. viii, p. 15).
1911. "AN ACT to amend Section one (1) of an act entitled, 'An Act authorizing cities, counties and townships in this state to make appropriations of money for, and to aid in the maintenance of, hospitals in cases as therein specified, or by the levy and collection of a special tax therefor, or otherwise, to contract for the care of the poor in hospitals as herein specified and legalizing appropriations of money heretofore made by any city for such purposes and declaring an emergency,' approved March 9, 1907," March 6, 1911 (*ibid.*, chap. ccxiv, p. 522).
1913. "AN ACT to amend Sections one (1), two (2) and five (5) of an act entitled, 'An Act to regulate the management of county asylums for the poor, defining the methods of appointing superintendents and other officers, defining certain duties of the commissioners of the counties, prescribing the method of purchasing supplies and selling products, the discipline and employment of inmates and other matters pertaining thereto, and repealing all laws or parts of laws in conflict therewith,' approved February 23, 1899," March 13, 1913 (*ibid.* [1913], chap. ccclx, p. 961).
1913. "AN ACT to enable counties to establish and maintain public hospitals, levy a tax and issue bonds therefor, elect hospital trustees, maintain training school for nurses, provide suitable means for the care of tuberculous

- persons, and make possible the ultimate establishment of an adequate supply of hospitals with equal rights to all and special privileges to none," March 15, 1913 (*ibid.*, chap. cclxxv, p. 472). (Charity patients were to be admitted free.)
1915. "AN ACT to amend Section one (1) of an act entitled, 'An Act to Amend Section four (4) of an Act concerning township business, approved February 27, 1899,' approved March 4, 1911," March 5, 1915 (*ibid.* [1915], chap. lxvii, p. 131).
1917. "AN ACT to amend Section two (2) and Section three (3) of an act entitled, 'An Act regulating the transfer of dependent children in Orphans homes and other custodial institutions,' approved February 6, 1903," February 28, 1917 (*ibid.*, chap. xxxv, p. 89).
1917. "AN ACT concerning the deportation of non-resident, insane, feeble-minded, epileptic or poor persons and making an appropriation," March 5, 1917 (*ibid.* [1917], chap. lvi, p. 142).
1917. AN ACT concerning township officers, fixing and regulating their compensation, prescribing their duties, abolishing the office of township road supervisor, providing when this Act shall take effect and to repeal all laws in conflict therewith, March 8, 1917 (*ibid.*, [1917], chap. 159, sec. 3, p. 602).
1917. "AN ACT to enable certain counties to establish and maintain public hospitals." [Law without the signature of the Governor] (*ibid.*, chap. cxliv, p. 527). (It was the duty of the township trustee as overseer of the poor to pay the treasurer of a hospital for the care of an indigent patient from his township.)
1919. "AN ACT concerning the construction and maintenance of highways connecting county infirmaries with improved highways." [Law without signature of Governor.] (*Ibid.* [1919], chap. ccviii, p. 199).
1919. (Each year the legislature appropriated funds for the Board of State Charities to supervise outdoor poor-relief. This amount in 1919 was \$3,000.)
1919. "AN ACT concerning the construction of and maintenance and aid in the hospitals by the counties of the state of Indiana, cooperating with other persons and organizations," March 14, 1919 (*Laws of Indiana* [1919], chap. cxxxi, p. 594).
1919. "AN ACT concerning the compensation for the care and control of dependent and neglected children and legalizing certain payments," March 11, 1919 (*ibid.*, chap. lxxvi, p. 442).
1921. "AN ACT entitled, an Act to amend Section five (5) of an act entitled, 'An Act to enable certain counties to establish and maintain public hospitals,' (Acts [1917], p. 527 Burns supplement 1918, sec. 3776f), Approved March 7, 1921" (*ibid.* [1921], chap. lxxxvii, p. 185). (Bonds may be issued.)
1921. "AN ACT to amend Section one (1) of an act entitled, 'An Act concerning the deportation of non-resident insane, feeble-minded, epileptic or poor

- persons, and making an appropriation,' approved March 5, 1917," March 5, 1921 (*ibid.*, chap. lv, p. 169).
1921. "AN ACT to permit township trustees in townships of the first class containing cities with a population of 300,000 or more, to pay the investigators of the poor out of the township poor fund on legal requisitions; approved by the board of county commissioners of the county in which said township is situated and declaring an emergency," March 6, 1923 (*ibid.*, chap. lxxxviii, p. 259).
1923. "AN ACT to provide for the payment of the cost of care, in county asylums, from the property, or estates of inmates in certain cases, and declaring an emergency," March 2, 1923 (*ibid.* [1923], chap. xli, p. 130). (If a person before or after death [being supported by public funds] is found to have an estate which is not needed in whole or in part by close relatives, the amount may be charged against the estate.)
1923. "AN ACT accepting the provisions and benefits of the act of Congress providing for the promotion of the welfare and hygiene of maternity and infancy, designating the proper agencies to receive federal funds and to administer the act and provide for carrying the act into effect," March 2, 1923 (*ibid.*, chap. lx, p. 175).
1925. "AN ACT to amend Sections twelve and twenty-one of an act entitled, 'An Act for the relief of the poor, repealing all laws in conflict therewith,' approved March 2, 1901," March 12, 1925 (*ibid.* [1925], chap. cxlix, p. 372). (The county auditor may grant the overseer permission to extend further aid, above the fifteen dollar limit, during the interim before the next regular meeting of the county commissioners. Persons denied assistance may be given a hearing upon application for such to the Board of County Commissioners and may, if they deem it proper, direct the overseer to relieve him.)
1925. "AN ACT to permit township trustees of a township in which is located a city of the second class, to pay the investigators of the poor out of the township poor fund on legal requisitions, approved by the Board of Commissioners of the county in which such township is situated," March 12, 1925 (*ibid.*, chap. clxiii, p. 400).
1927. "AN ACT authorizing the Board of Commissioners of certain counties to use and operate the asylum for incurable insane, established and maintained therein for the custody, care and treatment either of the incurable insane or the poor and indigent of such county or for such other county purposes as the board may determine," March 2, 1927 (*ibid.* [1927], chap. xxxix, p. 112). (This Act applied especially to Marion County.)
1929. "AN ACT to amend Sections one (1), two (2), and three (3) of an Act entitled, 'An Act to amend sections one (1), two (2), and three (3) of an Act entitled an Act requiring counties, cities and townships to supply free antitoxin to citizens who are too poor to purchase the same, approved

- March 9, 1907,' approved March 14, 1919," March 11, 1929 (*ibid.* [1929], chap. xc, p. 290).
1931. "AN ACT authorizing the borrowing of money by Boards of Commissioners of counties in Indiana to pay claims incurred and filed with such boards by township trustees for the relief of the poor, which claims are in excess of appropriations and tax levies made therefor, and where such counties have no funds with which to pay said claims, and for the payment of claims incurred and filed by trustees of townships for relief of the poor where appropriations and tax levies for such purposes have been exhausted, or are in danger of being exhausted, and requiring township trustees to levy a tax to repay such counties for any such funds so borrowed, for either or both of such purposes and declaring an emergency," March 6, 1931 (*ibid.* [1931], chap. lxxiii, p. 188). (Provisions of this act shall expire by limitation on April 1, 1933.)
1931. "AN ACT concerning township business in certain townships, prescribing duties of the trustee and township advisory board, providing penalties and declaring an emergency," March 6, 1931 (*ibid.*, chap. lxxiv, p. 190).
1931. "AN ACT to permit the township trustees of certain townships to pay the investigators of the poor out of the township poor fund on legal requisitions, approved by the board of commissioners of the county in which the township is situated," March 7, 1931 (*ibid.*, chap. lxxvii, p. 254).
1932. "AN ACT to amend Section one of an act entitled, 'An Act to permit the township trustees of certain townships to pay the investigators of the poor out of the township poor fund on legal requisitions, approved by the board of commissioners of the county in which the township is situated, approved March 7, 1931,'" August 17, 1932 (*Acts of Indiana*, Special Session [1932], chap. lviii, p. 207). (One investigator could be hired for each two hundred families. The compensation was not to exceed four dollars a day).
1932. "AN ACT creating and establishing township commissariats in certain townships, and providing for the operation, maintenance and management thereof, prescribing their rights, powers and duties and providing a method of advancing money, making loans and levying taxes for the repayment of such loans," August 16, 1932 (*ibid.*, chap. l, p. 191). (To expire December 31, 1933.)
1932. "AN ACT concerning the establishment of poor relief districts and the administration of poor relief therein and the levying of taxes therefor," August 16, 1932 (*ibid.*, chap. li, p. 195).
1932. "AN ACT to amend Sections nine (9) of an act entitled, 'An Act for the relief of the poor, repealing all laws in conflict therewith,' approved March 9, 1901," August 16, 1932 (*ibid.*, chap. xlvii, p. 188). (If an able-bodied indigent is offered work and refuses it, relief is not to be granted.)

1932. "AN ACT to amend Sections one (1) and two (2) of an act entitled, 'An Act authorizing the borrowing of money by Boards of Commissioners of counties in Indiana to pay claims incurred and filed with such boards by township trustees for the relief of the poor, which claims are in excess of appropriations and tax levies made therefor, and where such counties have no funds with which to pay said claims, and for the payment of claims incurred and filed by trustees of townships for relief of the poor where appropriations and tax levies for such purposes have been exhausted, or are in danger of being exhausted, and requiring township trustees to levy a tax to repay such counties for any such funds so borrowed, for either or both of such purposes, and declaring an emergency,' approved August 16, 1932" (*ibid.*, chap. xlvi, p. 186).
1933. "AN ACT creating the Governor's commission on unemployment relief, providing for the appointment and prescribing the duties thereof, transferring certain rights, powers and duties thereto, and providing for the making of investigations as to the performance of the duties of the township trustees as overseers of the poor, filing charges, providing for a hearing thereon by the governor, and the removal of any trustee from office by the governor, making appropriation for the purpose of this act, and declaring an emergency," March 8, 1933 (*Acts of Indiana* [1933], chap. cxxxvi, p. 759). (The Governor is to appoint members to be chosen at his discretion, to serve at his pleasure without compensation except for their actual expenditures.)
1933. "AN ACT to amend Section one (1) of an act entitled, 'An Act to amend Section nine (9) of an Act entitled, an Act for the relief of the poor, repealing all laws in conflict therewith, approved March 9, 1901, approved August 16, 1932,' approved March 8, 1933" (*ibid.*, chap. cxli, p. 784). (An affidavit was to be given by the applicant.)
1933. "AN ACT authorizing and requiring county attendance officers to serve as investigators of the poor in the several townships of the county," March 9, 1933 (*ibid.*, chap. ccxi, p. 1013). (This would be done at the request of the township trustees and by the approval of the County Commissioners. Under the direction of the overseer, the school attendance officers might be assigned to families which he would be visiting under the compulsory school attendance law.)
1933. "AN ACT concerning co-operative plans for employment of persons on poor relief, the creation of trust funds by counties and authorizing the issuance of scrip, trade certificates or evidences of indebtedness in payment of such work, and providing for the redemption thereof by counties issuing the same and the disposition of the trust fund upon the discontinuance of the plan, providing a penalty and declaring an emergency," March 11, 1933 (*ibid.*, chap. cclxx, p. 1218).
1933. "AN ACT to amend Section thirty-four (34) of an act entitled, 'An Act for

- the relief of the poor,' approved June 9, 1852," March 8, 1933 (*ibid.*, chap. clxxxiii, p. 916).
1933. "AN ACT authorizing township trustees to employ investigators of the poor and other necessary employees and pay their compensation out of the township poor funds on legal requisitions approved by the board of county commissioners, and declaring an emergency," March 8, 1933 (*ibid.*, chap. clxviii, p. 822). (One investigator could be employed for every two hundred families being assisted, and one assistant for every five hundred families. The qualifications for investigators were to be determined by the State Relief Commission.)
1933. "AN ACT legalizing the appropriation and expenditure of money as and for transportation of investigators of the poor and the acts and orders of certain public officials in connection therewith, and declaring an emergency," March 8, 1933 (*ibid.*, chap. clxx, p. 871).
1933. "AN ACT concerning the payment of water service by the overseers of the poor of certain townships," February 24, 1933 (*ibid.*, chap. xlv, p. 370). (If this service is provided to persons unable to pay for water, but who are not on public relief, the overseer is to take it from poor relief funds and charge it to that account, indicating "water furnished in the interest of public health.")
1933. "AN ACT to repeal Section four (4) of an act entitled, 'An Act authorizing the borrowing of money by boards of commissioners of counties in Indiana to pay claims incurred and filed with such boards by township trustees for the relief of the poor, which claims are in excess of appropriations and tax levies made therefor, and where such counties have no funds with which to pay said claims, and for the payment of claims incurred and filed by trustees of townships for relief of the poor where appropriations and tax levies for such purposes have been exhausted, or are in danger of being exhausted and requiring township trustees to levy a tax to repay such counties for any such funds so borrowed, for either or both of such purposes and declaring an emergency, March 6, 1931,' March 7, 1933" (*ibid.*, chap. cxxvi, p. 740).
1933. "AN ACT to repeal an act entitled, 'An Act concerning the establishment of poor relief districts and the administration of poor relief therein and the levying of taxes therefor, approved August 16, 1932,' and declaring an emergency," March 1, 1933 (*ibid.*, chap. lxxxvii, p. 581).
1933. "AN ACT to repeal an act, 'An Act concerning the construction and maintenance of highways connecting county infirmaries with improved highways' [without the signature of the Governor] (1919), and declaring an emergency," February 9, 1933 (*ibid.*, chap. ix, p. 25).
1933. "AN ACT establishing an Old Age Pension system in Indiana . . .," February 23, 1933 (*ibid.*, chap. xxxvi, p. 164).

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